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Circuit Court of Appeals

For the Ninth Circuit.

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND, a Corporation, and MARY-
LAND CASUALTY COMPANY, a Corpo-
ration,

Appellants,

vs.

KELSO STATE BANK, an Insolvent Banking
Corporation, and JOHN P. DUKE, as Su-
pervisor of Banking of the State of Wash-
ington, in Charge of and Liquidating the
Assets of the KELSO STATE BANK,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the
District of Oregon.

FILED

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F. D. MONCKTON,
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

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For the Appellees.

In the District Court of the United States for the District of Oregon.

IN EQUITY—No. E—8573.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation, and MARYLAND CASUALTY COMPANY, a Corporation,

Complainants,

vs.

UNITED STATES NATIONAL BANK OF PORTLAND, OREGON, a Corporation, and the KELSO STATE BANK, an Insolvent Banking Corporation, and JOHN P. DUKE, as Supervisor of Banking of the State of Washington, in Charge of and Liquidating the Assets of the Kelso State Bank,

Defendants.

trict Court of the United States for the District of Oregon, an amended bill of complaint, in words and figures as follows, to wit: [4]

In the District Court of the United States for the
District of Oregon.

IN EQUITY—No. E—8573.

FIDELITY & DEPOSIT COMPANY OF MARY-
LAND, a Corporation, and MARYLAND
CASUALTY COMPANY, a Corporation,
Complainants,

vs.

UNITED STATES NATIONAL BANK OF
PORTLAND, OREGON, a Corporation, and
the KELSO STATE BANK, an Insolvent
Banking Corporation, and JOHN P. DUKE,
as Supervisor of Banking of the State of
Washington, in Charge of and Liquidating
the Assets of the Kelso State Bank,
Defendants.

Amended Bill of Complaint.

Come now the Fidelity & Deposit Company of Maryland, a corporation, and, before the defendant The United States National Bank of Portland (Oregon) has responded to its bill of complaint on file herein and by consent of said defendant, amends its said bill of complaint, at the request and upon the consent of the Maryland Casualty Company, by adding the said Maryland Casualty Company, a corporation, as a party complainant, and the Kelso State Bank, an insolvent banking cor-

poration, and John P. Duke, as Supervisor of Banking of the State of Washington in charge of and liquidating the assets of the Kelso State Bank, as parties defendant, and said complainants file this, their amended bill of complaint, in said case, and, for their FIRST CAUSE OF ACTION, allege:

I.

That, at all times hereinafter mentioned, the Fidelity & Deposit Company of Maryland was and now is a corporation organized and existing under and by virtue of the laws of the State of Maryland, having its principal place of business in the city and county of Baltimore, in said state, and that it is now and, at all of said times, has been a resident and a citizen of said state of Maryland; [5] and that it is now and, at all of said times, has been authorized to do and doing business as a Surety Company in the State of Washington, and that it has paid its annual license fee last due as such corporation.

II.

That, at all times hereinafter mentioned, the Maryland Casualty Company was and now is a corporation organized and existing under and by virtue of the laws of the State of Maryland, having its principal place of business in the city and County of Baltimore in said state, and that it is now and, at all of said times, has been a resident and a citizen of said State of Maryland; and that it is now and, at all of said times, has been authorized to do and doing business as a surety company in the State of

Washington, and that it has paid its annual license fee last due as such corporation.

III.

That the defendant The United States National Bank of Portland (Oregon) is now and, at all times hereinafter mentioned, has been a national banking association, organized and existing as such under the laws of the United States, and located at Portland, Multnomah County, in the State of Oregon, and an inhabitant of the district of Oregon aforesaid and a citizen of said state.

IV.

That the defendant Kelso State Bank is now and, at all times hereinafter mentioned, was a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of Washington, having its principal place of business in the town of Kelso, Cowlitz County, Washington, and a citizen of said state, and during said times it was authorized to, engaged in and did transact, conduct and carry on a general banking business under the laws of the state of Washington up to the time that its business, assets and affairs were taken into the possession of the Supervisor of [6] Banking of the State of Washington, as hereinafter alleged.

V.

That at all times hereinafter mentioned, prior to April 1st, 1921, one Claude P. Hay was the duly appointed, qualified and acting Bank Commissioner of the State of Washington, acting under and by virtue of chapter 80 of the Session Laws of 1917 of the State of Washington, being an act entitled, "AN

ACT relating to banking and trust business; the organization, regulation, management and dissolution of banks and trust companies, providing penalties and repealing certain acts and declaring an emergency"; as amended by chapter 209 of the Session Laws of the State of Washington for 1919, being an act entitled, "AN ACT relating to banking and trust business, the organization, regulation, management and dissolution of banks and trust companies, relating to the office of bank commissioner, providing penalties, and amending sections 2, 3, 5, 7, 9, 15, 23, 24, 28, 33, 36, 37, 40, 47, 49, 75 and 80 of chapter 80 of the Laws of 1917"; and as amended by chapter 73 of the Session Laws of the State of Washington for 1921, being an act entitled, "AN ACT relating to the examination of banks, mutual savings banks and trust companies, and amending section 8 of chapter 80 of the Laws of 1917"; and as amended by chapter 7 of the Session Laws of the State of Washington for 1921, being an act entitled, "AN ACT relating to, and to promote efficiency, order and economy in, the administration of the government of the state, prescribing the powers and duties of certain officers and departments, defining offenses and fixing penalties, abolishing certain offices, and repealing conflicting acts and parts of acts," said law and amendments providing in part as follows:

Section 1, chapter 80, Laws of 1917.

"The governor shall, with the consent of the senate, appoint a state bank examiner, whose term of office shall be four years [7] and until his successor is appointed and qualified un-

less he be sooner removed. No person shall be appointed who is not and for two years prior to appointment has not been a citizen of this state and who has not had at least four years experience in banking, nor shall any person be eligible to, or hold such office while interested in any bank or trust company as director, officer or stockholder."

Section 59, chapter 80, Laws of 1917.

"Whenever it shall in any manner appear to the state bank examiner that any bank or trust company has violated any of the provisions of law or is conducting its business in an unsafe manner or that it refuses to submit its books, papers, or concerns to lawful inspection or that any director or officer thereof refuses to submit to examination on oath touching its concerns, or that it has failed to carry out any authorized order or direction of an examiner, the state bank examiner may give notice to the bank or trust company so offending or delinquent or whose director or officer is thus offending or delinquent to correct such offense or delinquency and, if such bank or trust company fails to comply with the terms of such notice within thirty days from the date of its issuance or within such further time as said examiner may allow, then the examiner may take possession of such bank or trust company as in case of insolvency."

Section 60, chapter 80, Laws of 1917.

"Whenever it shall in any manner appear

to the state bank examiner that any offense or delinquency referred to in the preceding section renders a bank or trust company in an unsound or unsafe condition to continue its business or that its capital or surplus is reduced or impaired below the amount required by its articles of incorporation or by this act, or that it has suspended payment of its obligations or is insolvent, said examiner may notify such bank or trust company to levy an assessment on its stock or otherwise to make good such impairment or offense or other delinquency within such time and in such manner as he may specify or if he deem necessary he may take possession thereof without notice.”

Section 62, chapter 80, Laws of 1917.

“Upon taking possession of any bank or trust company, the examiner shall proceed to collect the assets thereof and to preserve, administer and liquidate the business and [8] assets of such corporation. With the approval of the superior court of the county in which such corporation is located, he may sell, compound or compromise bad or doubtful debts and upon such terms as the court shall direct sell all real estate and personal property of such corporation. He shall deliver to each purchaser an appropriate deed or other instrument of title. If real estate is situated outside of said county, a certified copy of the orders authorizing and confirming the sale thereof shall be filed for record in the office of the auditor of the county,

in which such property is situated. He may appoint special deputy examiners, and other necessary agents, to assist in the administration and liquidation of such corporation, a certificate of such appointment to be filed with the clerk of the county in which such corporation is located. He shall require each special deputy to give a surety company bond, conditioned as he shall provide, the premium of which shall be paid out of the assets of such corporation. He may also employ an attorney for legal assistance in such administration and liquidation."

Section 1, chapter 209, Laws of 1919.

"The official title of the state bank examiner is hereby changed to 'bank commissioner.' The term 'state bank examiner' whenever used in the laws of this state shall be held and construed to mean the bank commissioner. The terms 'bank examiner' and 'examiner' wherever used in the laws of this state where from the context of the law is meant the state bank examiner shall be held and construed to mean the bank commissioner. * * * "

Section 2, chapter 7, Laws of 1921.

"There shall be, and are hereby created, departments of the state government which shall be known respectively as, * * * (4) the department of taxation and examination * * *; which department shall be charged respectively with the execution, enforcement, and administration of such laws, and invested

with such powers and required to perform such duties, as the legislature may provide.”

Section 3, chapter 7, Laws of 1921.

“There shall be a chief executive officer of each of the departments of the state government created by this act, to be known respectively as * * * (4) the director [9] of taxation and examination, * * * who shall be appointed by the governor with the consent of the senate, and hold office at the pleasure of the governor: * * * ”

Section 49, chapter 7, Laws of 1921.

“The department of taxation and examination shall be organized into, and consist of, three divisions, to be known respectively as, (1) the division of taxation, (2) the division of banking, and (3) the division of municipal corporations. * * * ”

Section 51, chapter 7, Laws of 1921.

“The director of taxation and examination shall appoint and deputize an assistant director, to be known as the supervisor of banking, who shall have charge and supervision of the division of banking, and shall have power, with the approval of the director, to appoint and employ such deputies, examiners, inspectors, and clerical and other assistants as may be necessary to carry on the work of the division. * * * ”

Section 54, chapter 7, Laws of 1921.

“The director of taxation and examination shall have the power, and it shall be his duty,

through and by means of the division of banking:

(1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the bank commissioner, * * * ”
Section 138, chapter 7, Laws of 1921.

“ * * * this act is necessary for the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House, January 20, 1921.

Passed the Senate, January 31, 1921.

Approved by the Governor February 9, 1921.”

That complainants hereby include herein, as if fully set out, the full text of each and all of the acts hereinabove referred to by title.

That, on the 1st day of April, 1921, the defendant John P. Duke was duly appointed Supervisor of Banking of the State of Washington, [10] having charge and supervision of the division of banking of said state and, thereupon and upon said day, duly qualified as such and ever since has been and now is the duly appointed, qualified and acting Supervisor of Banking of the State of Washington and, as such Supervisor of Banking, under and in accordance with the said Laws of the State of Washington above cited, has succeeded to all the powers, rights and duties of said Claude P. Hay, Bank Commissioner aforesaid, and is now and, at all times herein mentioned, has been a resident of and citizen of the State of Washington.

VI.

That, on the 17th day of March, 1921, said Kelso State Bank, being insolvent, refused to discharge its obligations in the ordinary course of banking business, and its affairs and assets were taken into the possession of said Claude P. Hay, then Bank Commissioner of the State of Washington, for liquidation and distribution; that ever since said 17th day of March, 1921, said Claude P. Hay, as Bank Commissioner, and said defendant, John P. Duke, as Supervisor of Banking, as successor to Claude P. Hay, has been and now is in possession of the business and affairs of said Kelso State Bank for the purpose of liquidating and administering the same; that, on the 17th day of March, 1921, said Kelso State Bank was and ever since has been and now is insolvent.

VII.

That the matter in controversy herein exceeds, exclusive of interest and costs, the sum or value of three thousand and no/100 (\$3000.00) dollars.

VIII.

That Cowlitz County is now and, at all times hereinafter mentioned, has been a municipal corporation created by the laws of the State of Washington, and a subdivision of said state, and, at all of said times, Linus Perry Brown has been and now is the [11] duly elected, qualified and acting County Treasurer of said Cowlitz County and, as such, the custodian of the funds and moneys belonging to said county, acting under and pursuant to Sections 3937, 3940 and 3943 of Remington's

1915 Codes and Statutes of Washington, being an official Code of the State of Washington, said sections providing as follows:

Section 3937. Election.—At the first election in each county, and every two years thereafter, there shall be elected a county treasurer, who shall have the qualifications of a voter, and shall continue in office for the term of two years, and until his successor is elected and qualified.”

Section 3940. To receive and disburse moneys.—He shall receive all moneys due and accruing to the county and disburse the same on the proper orders issued and attested by the county auditor. Upon receipt of all moneys other than taxes he shall issue his receipt therefore (therefor) in duplicate, one of which receipts he shall deliver immediately to the person or persons making such payment, and the duplicate of such receipt must be immediately filed by such treasurer in the office of the county auditor.”

“Section 3943. Moneys, how kept.—The county treasurer must keep all moneys belonging to this state, or to any county of this state, in his own possession until disbursed according to law. He must not place the same in the possession of any person to be used for any purpose; nor must he loan or in any manner use or permit any person to use the same, except as provided by law; but it shall be lawful for a county treasurer to deposit in his own

name, as county treasurer, any such moneys in any national, state or private bank or banks doing a general banking business in his county: Provided, that before any such deposit is made the bank in which it is proposed to make the same shall first give to such county treasurer a bond, with sureties to be approved by him, in such amount and with such conditions as he may require. Action may be brought on such bond either by such treasurer or by the county of which he is treasurer. But nothing done under the provisions of this section shall alter or affect the liability of any county treasurer or of the sureties on his official bond."

IX.

That, at all times herein mentioned, Section Seven of Article Eight of the Constitution of the State of Washington was, and now [12] is, in full force and effect, and that said Section Seven provides:

"No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation."

X.

That, at the time said Kelso State Bank was taken over by said Claude P. Hay, then Bank Commissioner of the State of Washington, for

liquidation and distribution, said Linus Perry Brown, as Treasurer of said Cowlitz County, had a balance on deposit in said bank of sixty-four thousand four hundred sixty and 96/100 (\$64,460.96) dollars of moneys belonging to said Cowlitz County, Washington, which said moneys said Linus Perry Brown, as County Treasurer of said County, had deposited in said bank, as trust funds belonging to said county, and held by him, as such trustee, which said funds said bank received with full knowledge of the trust character thereof and with full knowledge that said funds were the property of said Cowlitz County, and said funds were deposited in said bank by said Linus Perry Brown, as County Treasurer of said Cowlitz County, as trust deposits and for safe keeping only.

XI.

That, at all times herein mentioned, Section Eighty-one, Chapter Eighty of the Laws of Washington for 1917, was, and now is, in full force and effect; that said Section Eighty-one, of Chapter Eighty reads as follows:

“The owners or officers of any bank who shall fraudulently receive any deposit, knowing that such bank is insolvent, shall be deemed guilty of a felony and punished upon conviction thereof, by a fine not exceeding one thousand (\$1,000.00) dollars, or imprisoned in the State penitentiary not exceeding [13] ten years, or both such fine and imprisonment, at the discretion of the court.”

XII.

That, at the times the deposits of said County funds, amounting to said sum of sixty-four thousand four hundred sixty and $96/100$ (\$64,460.96) dollars were deposited in said Kelso State Bank, said bank was, ever since has been and now is hopelessly insolvent, and the officers of said bank knew, at all of said times, that said bank was hopelessly insolvent; that, on January 27th, 1921, the balance of County funds, which said County Treasurer had on deposit in said bank, was fifteen thousand eight hundred thirty-five and $34/100$ (\$15,835.34) dollars; that, on said date, said Treasurer deposited in said bank three hundred ninety-seven and $90/100$ (\$397.90) dollars; that said Treasurer deposited, on February 15th, 1921, in said bank, fourteen hundred fifty-three and $42/100$ (\$1,453.42) dollars; on February 21st, 1921, sixteen hundred ninety-four and $37/100$ (\$1,694.37) dollars; on February 28th, 1921, eighteen hundred seventy-seven and $91/100$ (1,877.91) dollars; on March 3d, 1921, twenty-two hundred sixty-four and $06/100$ (\$2,264.06) dollars; on March 8th, 1921, six hundred eighty-seven and $73/100$ (\$687.73) dollars; on March 9th, 1921, sixty-five hundred seventy-two and $55/100$ (\$6,572.55) dollars; on March 14th, 1921, thirty-five thousand three hundred thirty-seven and $57/100$ (\$35,337.57) dollars, and said Treasurer, from time to time, drew checks on said account, leaving in said account, on said 17th day of March, 1921, at the time said bank closed, the sum of sixty-four thousand four hundred sixty and $96/100$ (\$64,-

460.96) dollars; that, at the times said deposits were received by said bank, said bank was, and for many months prior thereto had been, hopelessly insolvent, and that, at all of said times, the officers of said bank knew that said bank was hopelessly insolvent, and said bank, and the officers of said bank, wrongfully, unlawfully and fraudulently represented to said [14] Linus Perry Brown, as such Treasurer, that said bank was solvent, and said Linus Perry Brown, as such Treasurer, believed said representations and, relying thereon, was induced to and did deposit said County funds in said bank and, by reason of the wrongful, unlawful and fraudulent acts of said officers in receiving said funds, when said bank was hopelessly insolvent within the knowledge of said officers as aforesaid, the title to said County funds did not pass to said bank, but remained in said Linus Perry Brown, as Treasurer of said Cowlitz County.

XIII.

That, on the 14th day of March, 1921, said Kelso State Bank purchased from the defendant The United States National Bank of Portland, with said County funds which it had wrongfully, unlawfully and fraudulently received from said County Treasurer of Cowlitz County as aforesaid and which funds were, at said time, the property of said Cowlitz County, certain warrants of Diking Districts Nos. 1, 2, 4, 6, 8, 9 and 10 of Cowlitz County, Washington and certain warrants of School District No. 36 of Cowlitz County, Washington, and certain other school district warrants of school dis-

tracts in Cowlitz County, Washington, and certain drainage district warrants of drainage district No. 3 of Clarke County, Washington, and road district warrants of Road District No. 1 of Cowlitz County, Washington, and certain warrants of the city of Rainier, Washington, all of which said warrants are of the total face value of thirty-three thousand four hundred ninety-one and 59/100 (\$33,491.59) dollars; that said warrants thereby became and were the property of said Cowlitz County, Washington, and the County Treasurer of said County thereby became entitled to possession thereof; that said Kelso State Bank, after purchasing said warrants with said County funds, as aforesaid, left said warrants with the defendant The United States National Bank of Portland, to be held by said defendant The United States National Bank of [15] Portland, as trustee, for the use and benefit of said County Treasurer of Cowlitz County, to secure the deposits of County funds of said Cowlitz County which said County Treasurer had made in said Kelso State Bank, and said defendant The United States National Bank of Portland accepted said warrants, as such trustee, and agreed to hold the same for the use and benefit of said County Treasurer of said Cowlitz County, as security for County funds of Cowlitz County theretofore deposited by said Treasurer in said Kelso State Bank; that said warrants are now in the possession of said defendant The United States National Bank of Portland, and are located in its banking-house in said city of

Portland, county of Multnomah, district and state of Oregon.

XIV.

That, more than one year prior to the time said bank closed, said Fidelity & Deposit Company of Maryland executed two certain bonds in the penal sums of forty thousand and ten thousand dollars respectively, to said Treasurer of Cowlitz County to secure County funds deposited in said Kelso State Bank, which said bonds were executed by said Fidelity & Deposit Company of Maryland, as surety and said Kelso State Bank, as principal, in favor of said County Treasurer, as obligee, and which said bonds were in full force and effect on the day said Kelso State Bank closed; that said Fidelity & Deposit Company of Maryland, as surety on said bonds, was obliged to and did pay said County Treasurer the sum of forty-six thousand sixty-six and 06/100 (\$46,066.06) dollars as its portion of the amount which said Treasurer had on deposit in said bank at the time it closed.

That, at the time said bank closed and at all times for more than one year prior thereto, said Maryland Casualty Company was surety on a certain bond in the penal sum of twenty thousand (\$20,000) dollars, which said bond was executed by said Maryland [16] Casualty Company, as surety, and said Kelso State Bank, as principal, in favor of said Linus Perry Brown, as Treasurer of said Cowlitz County, as obligee, to secure deposits of County funds of said Cowlitz County in said Kelso State Bank, and that said Maryland Cas-

ualty Company, as surety on said bond, was obliged to and did pay said County Treasurer as its portion of the amount which said Treasurer had on deposit, when said bank closed, the sum of eighteen thousand four hundred twenty-six and $\frac{43}{100}$ (\$18,426.43) dollars.

That the amount so paid said County Treasurer by said complainants included thirty-one and $\frac{53}{100}$ (\$31.53) dollars interest, in addition to the amount which said Treasurer had on deposit in said bank at the time it closed.

XV.

That, upon the payment of said amounts to said County Treasurer as aforesaid, said complainants became subrogated to all right, title and interest of said County Treasurer and of said Cowlitz County in and to said moneys and in and to all property and assets of said bank, which had been purchased with said moneys, and in and to all collateral or other security which said Kelso State Bank had deposited with said The United States National Bank of Portland, as trustee, or with said County Treasurer or with anyone else, as security for said deposits in said Kelso State Bank, and became subrogated to all actions and causes of actions, claims and demands, which said County Treasurer had, or might have, against said Kelso State Bank, or against any other person to recover the same, and said Linus Perry Brown, as County Treasurer of Cowlitz County, assigned to said complainants all the right, title and interest of said County Treasurer and of said Cowlitz County in and to said

moneys and said assets, and authorized and empowered said complainants to recover the same; [17] that, upon payment of said sums to said County Treasurer as aforesaid, complainants became, and now are, the owners of said warrants in the possession of the defendant The United States National Bank of Portland and became, and now are, entitled to the possession thereof.

XVI.

That said warrants hereinabove mentioned are particularly described in a certain receipt signed by said defendant The United States National Bank of Portland, on the 14th day of March, 1921, being No. 1469, a copy of which said receipt is now in the possession of said defendant The United States National Bank of Portland, and the original of which said receipt is in the possession of the defendant Kelso State Bank, and said defendant John P. Duke, as Supervisor of Banking; that said receipt is hereby referred to for a description of said warrants and is, by this reference, made a part hereof as though particularly set forth herein.

XVII.

That complainants have demanded of said defendant The United States National Bank of Portland, possession of said warrants, but that said defendant The United States National Bank of Portland has, at the instance and request of said defendants, Kelso State Bank and John P. Duke, as Supervisor of Banking of the State of Washington, refused to deliver said warrants to complainants and threatens to and will, unless enjoined and restrained from so

doing by this Honorable Court, deliver said warrants to said defendants Kelso State Bank and John P. Duke, as Supervisor of Banking of the State of Washington, and said warrants will thereby be removed from the State of Oregon and taken beyond the jurisdiction of this court, thereby causing immediate and irreparable injury, loss and damage to complainants.

XVIII.

That said defendants Kelso State Bank and John P. Duke, as [18] Supervisor of Banking in charge of and liquidating the assets of said Kelso State Bank, claim some interest and ownership in said warrants and claim that they are entitled to the possession thereof, but that said claims are invalid and without right, and that neither of said defendants, nor any other person than complainants, have any right, title or interest in or to said warrants, or any of them, or any right to the possession thereof.

And, for a SECOND CAUSE OF ACTION against the defendants Kelso State Bank and John P. Duke, as Supervisor of Banking of the State of Washington, in charge of and liquidating said Kelso State Bank, complainants allege:

I.

Repeat and incorporate herein paragraphs one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, fourteen and fifteen of the first cause of action herein.

II.

That at the time said Kelso State Bank closed its doors and was taken over by the Supervisor of Banking of the State of Washington as aforesaid, there was cash on hand in said bank in the amount of seventeen thousand six hundred forty-one and 64/100 (\$17,641.64) dollars, which said amount passed into the hands of said Supervisor of Banking of the State of Washington; that said sum of seventeen thousand six hundred forty-one and 64/100 (\$17,641.64) dollars was a portion of the County funds of said Cowlitz County, which said Linus Perry Brown, as Treasurer of Cowlitz County, Washington, had deposited in said bank when the same was insolvent within the knowledge of its officers as aforesaid, and were trust funds and the property of said Cowlitz County; that complainants herein are now the owners of said cash which passed into the hands of said Supervisor of Banking as aforesaid, and are entitled to recover the same in full; that said defendants Kelso State Bank and John P. Duke, as [19] Supervisor of Banking of the State of Washington, have refused to turn said funds over to complainants, or to deliver up possession thereof, although demand therefor has been made.

And, for a THIRD CAUSE OF ACTION against the defendants Kelso State Bank, a corporation, and John P. Duke, as Supervisor of Banking of the State of Washington in charge of and

liquidating the assets of the Kelso State Bank, complainants allege:

I.

Repeat and incorporate herein paragraphs one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, fourteen and fifteen of the first cause of action herein.

II.

That, of said moneys so deposited by said County Treasurer, as set forth in paragraph twelve of the first cause of action herein set forth, in the total sum of sixty-four thousand four hundred sixty and 96/100 (\$64,460.96) dollars, the sum of thirty-three thousand four hundred ninety-one and 59/100 (\$33,491.59) dollars was used by said Kelso State Bank for the purchase of the warrants referred to and described in the first cause of action hereinabove set forth; and the sum of seventeen thousand six hundred forty-one and 64/100 (\$17,641.64) dollars was retained by and remained in the possession of the Kelso State Bank up to and including the 17th day of March, 1921, and passed into the possession of the Bank Commissioner and thereafter into the possession of the defendant John P. Duke, as Supervisor of Banking in charge of and liquidating said defendant Kelso State Bank; and that the remainder, being the sum of thirteen thousand three hundred twenty-seven and 73/100 (\$13,327.73) dollars, was invested by the Kelso State Bank in other assets, which assets so purchased were in the possession of the Kelso State Bank at the time said Bank passed into the hands of the Bank Commis-

sioner and thereafter into the hands of the defendant [20] John P. Duke, as Supervisor of Banking in charge of and liquidating the said defendant Kelso State Bank; that your complainants are not informed as to the particular description or descriptions of the assets so purchased with said funds so deposited by the County Treasurer; that said assets so purchased were, at all times, the property of and belonged to Cowlitz County and, upon payment by complainants herein of the amount of said deposits, by virtue of complainants' relation as surety upon the depository bonds, all as set forth in paragraph fourteen of said first cause of action, your complainants became entitled to and the owners of said assets so purchased with the said sum of thirteen thousand three hundred twenty-seven and 73/100 (\$13,327.73) dollars; that, in order to determine the description or descriptions of said assets so purchased with said sum of thirteen thousand three hundred twenty-seven and 73/100 (\$13,327.73) dollars, it is necessary that the defendants Kelso State Bank and said John P. Duke, as said Supervisor of Banking, render an accounting of the disposition made of said sum of thirteen thousand three hundred twenty-seven and 73/100 (\$13,327.73) dollars, and furnish a description or descriptions of the assets so purchased with said sum, or any portion or portions thereof, and that, in event said accounting cannot be made in the full amount of thirteen thousand three hundred twenty-seven and 73/100 (\$13,327.73) dollars, that plaintiffs are entitled to a de-

decree adjudging that the defendants Kelso State Bank and said John P. Duke, as such Supervisor of Banking, are indebted to the complainants herein in the amount of any sums not so accounted for by assets in their possession; and that, as to any such decree of indebtedness, complainants are entitled that the same shall provide that the amount of such decree shall constitute a preferred claim, prior to the claims of any general creditors of said Kelso State Bank, and that said decree should direct the defendant John P. Duke, as such Supervisor of Banking, to pay the same prior to the [21] payment of any general creditors of said Kelso State Bank.

WHEREFORE, complainants pray:

1. That, upon the hearing of the motion for a temporary injunction, the defendant The United States National Bank of Portland be enjoined, during the pendency of this action, from delivering any of the warrants referred to in the first cause of action herein to the defendants Kelso State Bank or John P. Duke, as Supervisor of Banking of the State of Washington, or to anyone else excepting complainants herein.

2. That a decree issue from this Honorable Court that the said warrants referred to in the first cause of action hereinabove set forth are the property of the complainants and directing the said defendant The United States National Bank of Portland forthwith to deliver said warrants to complainants herein; and that, the said defendants Kelso State Bank and John P. Duke, as Supervisor

of Banking of the State of Washington, have no right, title or interest therein or thereto.

3. That a decree issue from this Honorable Court adjudging that complainants are the owners of all funds in the possession of the Kelso State Bank, at the time it was taken into the possession of the Bank Commissioner of the State of Washington, and directing the defendant John P. Duke, as Supervisor of Banking of the State of Washington to deliver such sum to the complainants herein.

4. That the defendants Kelso State Bank and John P. Duke, as Supervisor of Banking of the State of Washington, be required to account herein as to the disposition made by said Kelso State Bank of the remainder of the funds deposited in said Bank by said Linus Perry Brown, as County Treasurer of Cowlitz County, and as to the assets purchased with such remainder of said deposits [22] and that, as to any assets revealed and disclosed by such accounting, the same be decreed to be the property of the complainants herein, and that the defendant John P. Duke, as Supervisor of Banking of the State of Washington, be directed forthwith to deliver such assets to the complainants herein; and that, as to any portion of said funds so deposited by said County Treasurer and not shown to be in the assets disclosed to the Court and in the possession of said defendant John P. Duke, as Supervisor of Banking of the State of Washington, the complainants be adjudged to be creditors of the said Kelso State Bank in such amount; and that said defendant John P. Duke, as Supervisor of

Banking of the State of Washington, be ordered and directed to pay such amounts to complainants as a prior and preferred claim before the payment of any claims of general creditors of said Kelso State Bank.

5. That the decree herein provide that the complainants recover their costs and disbursements, to be taxed as provided by law.

6. That complainants have such other and further relief as to this Honorable Court may seem just and equitable in the premises.

LOREN GRINSTEAD,
GRINSTEAD & LAUBE,
Solicitors for Complainants.

State of Washington,
County of King,—ss.

Personally appeared before the undersigned authority, a notary public in and for the State of Washington, Loren Grinstead, as attorney in fact for the Fidelity & Deposit Company of Maryland, a corporation, one of the complainants in the [23] foregoing bill in the above cause, who, being duly sworn as to the truth of the allegations made in the above bill, says that he has read the foregoing bill and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and, as to those matters, he believes them to be true.

[Seal]

WILLIAM T. LAUBE,
Notary Public in and for the State of Washington,
Residing at Seattle.

Filed September 26, 1921. G. H. Marsh, Clerk.
[24]

AND AFTERWARDS, to wit, on the 26th day of November, 1921, there was duly filed in said court, an answer of Kelso State Bank to the amended bill of complaint, in words and figures as follows, to wit: [25]

In the District Court of the United States, for the
District of Oregon.

IN EQUITY.—No. E—8573.

FIDELITY & DEPOSIT COMPANY OF MARY-
LAND, a Corporation, and MARYLAND
CASUALTY COMPANY, a Corporation,
Complainants,

vs.

THE UNITED STATES NATIONAL BANK OF
PORTLAND, (OREGON), a Corporation,
and the KELSO STATE BANK, an Insolvent
Banking Corporation, and JOHN P. DUKE,
as Supervisor of Banking of the State of
Washington in Charge of and Liquidating
the Assets of the Kelso State Bank.

Defendants.

Answer to Amended Bill of Complaint.

Come now the defendants the Kelso State Bank,
an insolvent banking corporation, and John P.
Duke as Supervisor of Banking of the State of
Washington in charge of and liquidating the as-

sets of the Kelso State Bank and for answer to the amended bill of complaint herein admit, deny and allege as follows:

I.

These defendants admit paragraphs I, II, III, IV and V of the amended bill of complaint.

II.

Answering paragraph VI these defendants admit that the said Kelso State Bank was on the 17th day of March, 1921, taken possession of by the banking department of the State of Washington for the purpose of liquidation, but these defendants allege that the affairs of said bank are now being liquidated by T. H. Adams, Special Deputy Supervisor of Banking of the State of Washington Liquidating the Kelso State Bank. [26]

III.

These defendants admit paragraphs VII, VIII and IX of the amended bill of complaint herein.

IV.

Answering paragraph X of the amended bill of complaint herein these defendants admit that at the time the said Kelso State Bank was taken over by Claude P. Hay, Bank Commissioner, on the 17th day of March, 1921, that Linus Perry Brown, County Treasurer of Cowlitz County, Washington, had a balance on deposit in said bank of \$64,460.96, but these defendants deny all of the other matters and things alleged in said Paragraph X.

Further answering paragraph X these defendants allege that Section 5072 of Remington's Codes & Statutes of the State of Washington requires each

county treasurer to designate one or more banks as depositaries of public funds held and required to be kept by him as such treasurer.

Section 5073 of the said Code provides that the bank so designated shall furnish a bond to be approved by the County Commissioners as security for moneys deposited at the bank.

Section 5074 of said Code provides that the bank so designated shall enter into an agreement to pay to the County two per centum per annum on the average daily balances of all moneys so deposited by such county treasurer, interest payments to be made monthly.

Section 5075 of the Code provides that the treasurer shall deposit the money coming into his hands as such treasurer with the banks complying with the requirements of the sections previously quoted.
[27]

That said Linus Perry Brown as said County Treasurer had designated the Kelso State Bank as one of the depositaries of public funds of the County and the bond was furnished and approved by the County Commissioners as security for the funds so deposited and the moneys deposited in the said Kelso State Bank by the said Linus Perry Brown as County Treasurer were deposited under and in pursuance of the provisions of law as herein set forth, and not otherwise.

V.

These defendants admit paragraph XI of the amended bill of complaint.

VI.

Answering paragraph XII of the amended bill of complaint these defendants admit that during his term of office as such County Treasurer said Linus Perry Brown was carrying a checking balance with said Kelso State Bank and was from time to time making deposits with said bank and checking against the account, and these defendants admit that on the 27th day of January, 1921, there was a balance to the credit of the County Treasurer with said bank amounting to the sum of \$15,835.34, and that on said date said treasurer deposited with said bank \$397.00; and that on February 15, 1921, he deposited with said bank \$1453.42; and that on February 21, 1921, he deposited with said bank \$1694.37; and that on February 28, 1921, he deposited with said bank \$1877.91; and that on March 3d, 1921, he deposited with said bank \$2264.06; and that on March 8th, 1921, he deposited with said bank \$687.73; and that on March 9th, 1921, he deposited with said bank \$6572.55; and that on March 14th, 1921, he deposited with said bank \$35,337.57.

[28]

That on January 27, 1921, he checked against the account then on deposit with the Kelso State Bank \$16.47; on January 31, 1921, he checked against said account \$51.00; on February 1, 1921, he checked against said account \$6.50; on February 5, 1921, he checked against said account \$84.68; on February 7, 1921, he checked against said account \$1.90; on February 8, 1921, he checked against said account \$46.50; on February 9, 1921, he checked

against said account \$147.50; on February 11, 1921, he checked against said account \$47.84; on February 15, 1921, he checked against said account \$42.00; on February 21, 1921, he checked against said account \$35.00; on February 23, 1921, he checked against said account \$0.89; on February 24, 1921, he checked against said account \$238.34; on February 25, 1921, he checked against said account \$62.40; on February 26, 1921, he checked against said account \$40.00; on February 28, 1921, he checked against said account \$3.49; on March 1st, 1921, he checked against said account \$7.50; on March 2d, 1921, he checked against said account \$0.70; on March 3d, 1921, he checked against said account \$125.00; on March 5th, 1921, he checked against said account \$7.50; on March 11th, 1921, he checked against said account \$14.50; on March 14th, 1921, he checked against said account \$33.10—leaving a balance on deposit to his credit in the sum of \$64,460.96.

As to the other matters and things alleged and set forth in said paragraph XII these defendants deny each and every allegation thereof.

VII.

Answering paragraph XIII of the amended bill of complaint herein these defendants deny each and every allegation therein contained, except that these defendants admit that the United States National Bank of Portland, Oregon, one of the defendants herein, is now in the possession of certain warrants, but these defendants allege that said bank is holding said warrants in trust for the Kelso State Bank and not otherwise. [29]

VIII.

These defendants admit paragraph XIV of the amended bill of complaint herein.

IX.

These defendants deny all of the matters and things alleged in paragraph XV of the amended bill of complaint, and the whole thereof.

X.

These defendants deny paragraph XVI of the amended bill of complaint herein.

XI.

Answering paragraph XVII these defendants admit that demand has been made upon the defendant, the United States National Bank of Portland for the delivery of said warrants to the Supervisor in charge of the Kelso State Bank; as to the other matters and things set forth in said paragraph XVII these defendants deny the same.

For answer to the second cause of action in the amended bill of complaint these defendants deny and allege as follows:

I.

These defendants deny each and every allegation contained in the second cause of action, and the whole thereof. [30]

For further defense these defendants allege:

I.

That for a long time prior to January 27, 1921, the Kelso State Bank had been engaged in the business of banking at Kelso, Washington, doing a general banking business; that numerous persons had from time to time deposited money with the

bank and issued checks and among other depositors was the Treasurer of Cowlitz County who was depositing money with the bank as other depositors, and checking against it, using the deposit as a general checking account.

II.

That on January 27, 1921, there was a balance of deposits as shown by the records of the bank amounting to the sum of \$216,090.44; that thereafter and between the 27th day of January, 1921, and the 17th day of March, 1921, when the bank was closed, there was deposited by various persons a total sum of \$352,871.21, a portion of which was deposited by the County Treasurer of said Cowlitz County; that during said time checks were drawn against such deposits to the amount of \$325,219.88.

III.

That all of the funds so deposited by the said Linus Perry Brown as County Treasurer of Cowlitz County, Washington, was commingled with the funds deposited by other customers of the bank and became a part of the general balance of the bank.
[31]

For answer to the third cause of action contained in the amended bill of complaint these defendants deny and allege, as follows:

I.

These defendants deny each and every allegation contained in the third cause of action and the whole thereof.

As a further defense to said third cause of action these defendants allege:

I.

That for a long time prior to January 27, 1921, the Kelso State Bank had been engaged in the business of banking at Kelso, Washington, doing a general banking business; that numerous persons had from time to time deposited money with the bank and had issued checks and among other depositors was the Treasurer of Cowlitz County who was depositing money with the bank as other depositors, and checking against it, using the deposit as a general checking account.

II.

That on January 27, 1921, there was a balance of deposits as shown by the records of the bank amounting to the sum of \$216,090.44; that thereafter and between the 27th day of January, 1921, and the 17th day of March, 1921, when the bank was closed, there was deposited by various persons a total sum of \$352,871.21, a portion of which was deposited by the County Treasurer of said Cowlitz County; that during said time checks were drawn against such deposits to the amount of \$325,219.88.

III.

That all of the funds so deposited by the said Linus Perry Brown as County Treasurer of Cowlitz County, Washington, was commingled with the funds deposited by other customers of the bank and became a part of the general balance of the bank.

[32]

For a further and separate answer to the amended bill of complaint herein these defendants allege:

I.

That the Kelso State Bank was a corporation organized under and by virtue of the laws of the State of Washington and engaged in the banking business at Kelso, Washington, until the 17th day of March, 1921, when it became unsound and in an unsafe condition to continue business and was taken charge of by the Supervisor of banking of the State of Washington for liquidation and is now in course of liquidation in charge of T. H. Adams, Special Deputy Supervisor of Banking of the State of Washington.

II.

That during the time mentioned and referred to in the bill of complaint herein for several years prior thereto one F. L. Stewart was employed as the Cashier of the Kelso State Bank and entrusted with the general management of the affairs of the bank and given control and possession of the funds, securities and properties of the bank; that from time to time the said F. L. Stewart juggled the accounts, misused and appropriated the funds of the bank, misused and mismanaged the assets of the institution and loaned the funds of the bank to irresponsible persons and by reason thereof the bank became unsound and the supervisor of Banking of the State of Washington took charge for the purpose of liquidating the affairs of the bank, and that during such time and at [33] the time the deposits were made by the County Treasurer of Cowlitz County with the said Kelso State Bank the directors and other officers of the bank had no

actual knowledge that the funds of the bank had been appropriated and embezzled by the cashier, and had no actual knowledge that the bank had become unsound or in an unsafe condition to continue business.

III.

That at the time the deposits were made by the Treasurer of Cowlitz County the bank was in substantially the same financial condition it had been in for a long time prior thereto and was carrying on a regular banking business without contemplating any insolvency proceedings or any action towards liquidation of the affairs of the bank and if the Bank Commissioner had not taken charge of the bank for liquidation the bank would still be running with but little if any difference in its condition.

IV.

That under the laws of the State of Washington moneys deposited by the County Treasurer with the Kelso State Bank became the property of the bank and established the relation of debtor and creditor between the County Treasurer and the Kelso State Bank.

V.

That during the time mentioned in the amended bill of complaint herein money was deposited by the County Treasurer of Cowlitz County with the Kelso State Bank, as alleged in the amended complaint, the bank was [34] engaged in a general banking business in Kelso and was receiving deposits from various customers and the total amount deposited during such time amounted to the sum of

\$352,871.21, against which checks were drawn amounting to the sum of \$325,219.88, and all the funds and cash deposited by the said County Treasurer during the time alleged was commingled with the assets and moneys of the bank.

VI.

That subsequent to the 17th day of March, 1921, and while said bank was in the hands of the banking department of the State of Washington for liquidation the plaintiff the Fidelity & Deposit Company of Maryland presented to the officer in charge of the bank its claim for \$46,066.06, being the amount which it paid to the County Treasurer and being the sum for which the said plaintiff was liable under its bonds to the County Treasurer for funds deposited with the said Kelso State Bank, which said claim was duly allowed by the officer in charge of the bank as a general claim entitling the said plaintiff to dividends from the assets of the bank, to be paid in course of liquidation, which said claim was duly approved and allowed as a general claim by the Superior Court of Cowlitz County, Washington, and such claim so presented included all of the money for which the said plaintiff became responsible on account of its liability to the County treasurer on its bond, and is the same liability for which the said plaintiff seeks to recover the warrants mentioned and referred to in the amended bill of complaint herein; [35]

That subsequent to the 17th day of March, 1921, and while the said bank was in charge of the banking department of the State of Washington for

liquidation the plaintiff the Maryland Casualty Company presented its claim to the officer in charge of the bank for the sum of \$18,426.43, being the amount which it paid to the County Treasurer and being the sum for which the said plaintiff was liable under its bond to the County Treasurer for funds deposited with the Kelso State Bank, which said claim was duly allowed by the officer in charge of the bank liquidating its funds as a general claim entitling the plaintiff to dividends from the assets of the bank, to be paid in course of liquidation, which said claim was duly presented and allowed as a general claim by the Superior Court of Cowlitz County, Washington, and such claim so presented included all of the money for which the said plaintiff became responsible on account of its liability to the County Treasurer on its bond and is the same liability for which said plaintiff seeks to recover the warrants mentioned and referred to in the amended bill of complaint herein, and these defendants allege that plaintiffs have presented their claims to the officers liquidating the affairs of the bank, and said claims having been regularly allowed and notice thereof given to the plaintiffs, that plaintiffs have elected to continue the relation of debtor and creditor established by the general deposits of the Treasurer with the said bank and are now estopped from alleging or claiming any title to the warrant alleged to have been purchased with the proceeds from deposits made by the County Treasurer. [36]

VII.

That on or about the 20th day of September, 1920, the United States National Bank of Portland, Oregon, one of the defendants herein, loaned to the said Kelso State Bank the sum of \$7988.12 at an agreed rate of interest of seven per cent per annum, and received as collateral security therefor certain warrants, being the warrants in controversy in this action, and now in possession of the defendant the United States National Bank of Portland, a list of the warrants being attached to the answer and counterclaim of the defendant the United States National Bank of Portland herein; that thereafter certain of said warrants, amounting to the sum of \$374.50 were paid and credited of like amount given upon the loan mentioned.

VIII.

That on or about the 6th day of December, 1920, the United States National Bank of Portland, Oregon, one of the defendants herein, loaned to the said Kelso State Bank the sum of \$26,783.76 at an agreed rate of interest of seven per cent per annum, and received as collateral security for said loan certain warrants, being the warrants in controversy in this suit and a list of which is attached to the answer and counterclaim of the said defendant herein, the United States National Bank of Portland; that thereafter certain of said warrants were paid amounting to the sum of \$905.79 and credit for that amount given upon the loan.

IX.

That on the 14th day of March, 1921, there was due and owing from the Kelso State Bank to the defendant the United States National Bank of Portland, Oregon, on account of the principal and loan of the 9th day of September, 1920, hereinbefore referred to, the sum of \$7613.62 and \$50.32 interest, or a total of \$7663.95; and there was due on account of the second loan above mentioned the principal sum of \$25,877.97 and interest in the sum of \$191.24 or a total of \$26,069.21; that on said 14th day of March, 1921, the said Kelso State Bank paid from the general funds of the bank all of the principal and interest then due upon both of said loans and the debts were cancelled and the liabilities ceased; that said warrants were left in the temporary custody of the defendant the United States National Bank of Portland by the said Kelso State Bank, the liability for which said warrants were deposited as collateral security having been fully satisfied and paid and the said Kelso State Bank was entitled to the said warrants upon demand.

X.

That after the bank was taken charge of by the officers of the banking department of the State of Washington demand was made for said warrants but the defendant the United States National Bank of Portland herein has refused to deliver the same to these defendants. [38]

WHEREFORE these defendants pray that the plaintiffs take nothing and that their amended bill

of complaint be dismissed, that the claim of the United States National Bank of Portland to the said warrants be denied, and that the defendant the United States National Bank of Portland be ordered to deliver the said warrants to these defendants to be administered upon and disposed of as a part of the assets of the Kelso State Bank, and that these defendants have such other, further and different relief as shall seem proper to a court of equity, and for their costs and disbursements herein.

MILLER, WILKENS & MILLER,
Attorneys for Defendants Kelso State Bank, an
Insolvent Banking Corporation, and John P.
Duke as Supervisor of Banking of the State
of Washington in Charge of and Liquidating
the Assets of the Kelso State Bank.

State of Washington,
County of Clarke,—ss.

T. H. Adams, being first duly sworn, doth say on his oath: That he is the Special Deputy Supervisor of banking of the State of Washington liquidating the Kelso State Bank, that he has read the foregoing Answer to Amended Bill of Complaint, knows the matters and things herein stated and that the same is true as he verily believes.

T. H. ADAMS.

Subscribed and sworn to before me this 16th day of November, A. D. 1921.

L. CLARKE McCOY,
Notary Public, Residing at Vancouver, Washing-
ton.

My Commission expires Oct. 14, 1925.

Filed November 26, 1921. G. H. Marsh, Clerk.
[39]

AND AFTERWARDS, to wit, on the 28th day of December, 1921, there was duly filed in said court a reply to the answer of the Kelso State Bank, in words and figures as follows, to wit:
[40]

In the District Court of the United States for the District of Oregon.

IN EQUITY—No. E—8573.

FIDELITY & DEPOSIT COMPANY OF MARYLAND, a Corporation, and MARYLAND CASUALTY COMPANY, a Corporation,
Complainants,

vs.

THE UNITED STATES NATIONAL BANK OF PORTLAND (OREGON), a Corporation,
et al.,

Defendants.

Reply to Answer of the Defendants Kelso State Bank, an Insolvent Banking Corporation, and John P. Duke, as Supervisor of Banking of the State of Washington, etc.

Come now the above-named complainants Fidelity & Deposit Company of Maryland, a corporation, and Maryland Casualty Company, a corporation, and, for their reply to the answer of the defendants Kelso State Bank, an insolvent banking corporation, and John P. Duke, as Supervisor of banking of the

State of Washington in charge of and liquidating the assets of the Kelso State Bank on file herein, admit, deny and allege as follows:

I.

Replying to the affirmative matter contained in paragraph two of said answer, complainants allege that T. H. Adams, as Special Deputy Supervisor of Banking of the state of Washington, is assisting John P. Duke, as Supervisor of Banking of the State of Washington, in the administration and liquidation of the Kelso State Bank. That said T. H. Adams was appointed pursuant to the provisions of Section 62, of Chapter 80, of the Session Laws of 1917 of the State of Washington, as amended by Chapter 209 of the Session Laws of the State of Washington for 1919, and as amended by Chapter 7, of the Session Laws of the State of Washington for 1921, all of which said laws are specifically pleaded in the amended bill of complaint herein, and that the duties of said T. H. Adams, as such Special Deputy Supervisor of Banking, are as defined in said laws, [41] and not otherwise. Deny each and every affirmative allegation in said paragraph two contained, not hereinbefore specifically admitted.

II.

Replying to paragraph four of said answer, complainants allege that Sections 5072-3-4-5 and 6, of Remington's Codes and Statutes of the State of Washington, of 1915, read as follows, and not otherwise:

“Section 5072. Designation of Depositary by County Treasurer.—Each county treasurer in this state shall on the first day of July, 1907, and annually on the second Monday in January thereafter, and at such other times as he may deem necessary, designate one or more banks in the state as depositary or depositaries of all public funds held and required to be kept by him as such treasurer, and such designation or designations shall be in writing, and the same shall be filed with the board of county commissioners of his county, and no county treasurer shall deposit any public money in banks except as herein provided.”

“Section 5073. Bond—Approval of—Securities in Lieu of.—Before any such designation or designations shall become effectual and entitle the said treasurer to make deposits in such bank or banks, the bank or banks so designated shall within ten days after such designation or designations have been filed, file with the county clerk of such county a surety bond to such county treasurer, properly execute by some reliable surety company qualified under the laws of this state to do business therein, in the maximum amount of deposits designated by said treasurer to be carried in such bank or banks, conditioned for the prompt and faithful payment thereof on checks drawn by such treasurer, which bond must be approved by the chairman of the board of county commissioners, the prosecuting at-

torney and the county treasurer, or any two of such officers of said county, before being filed with the county clerk, and unless so approved the same shall not be received or filed by the county clerk: Provided, that said depositary or depositaries may deposit with the county treasurer good and sufficient municipal, school district, county or state bonds or warrants, United States bonds, first mortgage railroad bonds listed on the New York stock exchange, or local improvement bonds or warrants whose legality have been passed upon favorably by the supreme court, or public utility bonds or warrants issued by or under the authority of any municipality of the state for water, power or light plants or maintenance [42] thereof upon which principal or interest is not in default at the time of such deposit, the aggregate market value of which shall not be less than the amount required in said deposit, in lieu of the surety bond herein provided for.

“Section 5074. Contract as to Interest.— Before any such designation or designations shall become effectual and entitle said treasurer to make deposits as hereinabove provided, the bank or banks so designated shall also enter into a written contract with the county whose treasurer is to make such deposits, to pay to said county, to be credited to the county expense fund thereof two per centum per annum on the average daily balances of all moneys so

deposited by such county treasurer in said bank while acting as such depositary; such payments to be made monthly to said county while such deposits continue in such depositary; said contract shall be in such form as shall be approved by the board of county commissioners and the prosecuting attorney of said county.

“Section 5075. Funds on Deposit Deemed to be in Treasury.—The county treasurer shall deposit with any depositary or depositaries which have fully complied with all requirements as herein provided, any county moneys in his hands or under his official control, and for the purpose of making the quarterly settlement and counting funds in the hands of the treasurer any such sums so on deposit shall be deemed to be in the county treasury.

“Section 5076. Liability of Treasurer.—The provisions of this chapter shall in no way relieve or release the county treasurer from any liability upon his official bond as such treasurer, or any surety upon such bond, and shall in no way affect the duty of the several county treasurers of this state to give the bond as such treasurer now required by law.”

Complainants further allege that under the constitution of the State of Washington, to wit: under the provisions of Section 7 of Article 8 of said Constitution, the moneys deposited in said Kelso State Bank by the County Treasurer of Cowlitz County did not become general deposits, but were

so deposited as special deposits and for safe keeping only.

These complainants further admit that Linus Perry Brown had designated the Kelso State Bank as one of the depositaries of [43] public funds of Cowlitz County, and that the bond was furnished and approved by the County Commissioners as security for the funds so deposited by said Treasurer in said Kelso State Bank.

These complainants deny each and every other allegation in said paragraph four not hereinbefore specifically admitted.

III.

Replying to paragraph seven of said answer, complainants deny that the United States National Bank of Portland is holding said warrants in trust for the Kelso State Bank and deny that said Bank is holding them in any capacity other than as alleged in the amended bill of complaint herein.

Replying to the further defense to the second cause of action set out in said answer, complainants admit, deny and allege as follows:

I.

Deny each and every allegation in paragraphs one, two and three of said further defense, except that complainants admit that, for a long time prior to January 27th, 1921, the Kelso State Bank had been engaged in the business of banking at Kelso, Washington, doing a general banking business.

Relying to the further defense to the third cause of action contained in said answer, complainants admit, deny and allege as follows:

I.

Admit the allegations of paragraph one thereof, except that complainants deny that the Treasurer of Cowlitz County was depositing money as other depositors, or otherwise than as alleged in the amended bill of complaint herein, and deny that said Treasurer was using the deposits as a general checking account or otherwise than as alleged in said amended bill of complaint. [44]

II.

Deny each and every allegation in paragraphs two and three of said further answer to said third cause of action.

Replying to the further and separate answer to the amended bill of complaint set out in said answer, complainants admit, deny and allege as follows:

I.

Replying to paragraph one thereof, complainants admit that the Kelso State Bank was a corporation organized under and by virtue of the laws of the state of Washington and engaged in the banking business at Kelso, Washington, until the 17th day of March, 1921, and admit that, on said date, it was unsound and in an unsafe condition to continue business. Deny each and every other allegation in said paragraph one contained and in that behalf allege that on said 17th day of March, 1921, said Kelso State Bank was taken charge of by Claude P. Hay, as Bank Commissioner of the state of Washington, as alleged in the amended bill of complaint herein, and that on or about the first

day of April, 1921, John P. Duke, as Supervisor of Banking of the state of Washington succeeded said Claude P. Hay, as Bank Commissioner of said state, and on said date took charge of said bank as such Supervisor of Banking of the state of Washington, as alleged in the amended bill of complaint herein, and that T. H. Adams, as Special Deputy Supervisor of Banking of the state of Washington, is assisting said John P. Duke, as Supervisor of Banking of said state in the administration and liquidation of said bank.

II.

Replying to paragraph two of said further and separate answer, complainants admit that during the time mentioned and referred to in the amended bill of complaint herein, and for several [45] years prior thereto, one F. L. Stewart was employed as cashier of the Kelso State Bank. Deny each and every allegation in said paragraph two contained, not hereinbefore specifically admitted.

III.

Deny each and every allegation in paragraphs three, four and five of said further and separate answer, except complainants admit that during the time mentioned in the amended bill of complaint herein the Kelso State Bank was engaged in a general banking business in Kelso, Washington.

IV.

Replying to paragraph six of said further and separate answer, these complainants admit that on or about the 25th day of April, 1921, they presented

to the officer in charge of the Kelso State Bank their respective claims, and in that behalf allege that a true and correct copy of the claim so presented by the Fidelity & Deposit Company of Maryland is hereto attached, marked Exhibit "A" and made a part hereof, and that a true and correct copy of the claim so presented by the Maryland Casualty Company is hereto attached, marked Exhibit "B" and made a part hereof.

Complainants deny said claims were presented as general claims, or otherwise, than as stated in said claims and deny said claims were allowed by the Supervisor of Banking as general claims, or otherwise, than as therein stated.

Complainants deny that said claims were approved and allowed as general claims by the Superior Court of Cowlitz County, Washington, and in that behalf allege that there is no law of the state of Washington requiring claims to be approved by the Superior Court of Cowlitz County, or by any court, and that if said claims were approved and allowed as general claims by the Superior Court the approval and allowance of the same were made without notice to these complainants, and that said Court, in so approving and allowing [46] the same as general claims, was without jurisdiction.

Complainants further allege that at the time said claims were presented by said complainants to the officer in charge of said Kelso State Bank, said complainants did not have any knowledge that the moneys of said County Treasurer had been de-

posited in said bank when the same was insolvent and did not have any knowledge that said moneys or assets purchased with the same passed into the hands of said Supervisor of Banking and did not have any knowledge that the warrants described in the amended bill of complaint herein were purchased with said moneys and had no knowledge that said warrants were deposited with the defendant United States National Bank of Portland as security for the deposits of said County Treasurer, all as alleged in the amended bill of complaint herein. That the officer in charge of said defendant Kelso State Bank knew at the time said claims were presented that said complainants did not have knowledge of any of the facts herein set forth.

Complainants further allege that the presentation of said claims in the manner and form in which the same were presented did not, in any manner, prejudice the rights of said defendants, or the rights of any of the creditors of said Kelso State Bank and that said defendants did not, in any manner, change their position on account of said claims being presented in the manner and the form in which they were presented. That in presenting said claims said complainants did not elect to establish or continue the relation of debtor and creditor between themselves and said defendants, but set forth in such claims such facts as were, at said time, within their knowledge for the purpose of having such relief as they might by law be entitled to.

These complainants further allege that, immediately upon ascertaining facts other than those stated in said claims, as hereinabove set forth and as alleged in the amended bill of complaint [47] herein, they immediately notified said defendants thereof and that at the same time notified defendants that their respective claims were not to be construed as general claims, but that they claimed they were entitled to the relief demanded in the amended bill of complaint herein.

V.

Replying to paragraph seven and eight of said further and separate answer, complainants deny that said warrants were received as collateral security for a loan, as alleged in said paragraph eight, and in that behalf allege that said warrants were purchased by said United States National Bank of Portland from the Kelso State Bank, and at the same time an agreement was entered into between said banks wherein and whereby said Kelso State Bank agreed to repurchase said warrants from said United States National Bank of Portland. As to the remaining allegations in said paragraphs seven and eight, complainants allege that they have no knowledge or information sufficient to form a belief, and therefore deny the same.

VI.

Replying to paragraph nine of said further and separate answer, complainants deny each and every allegation therein contained, and in that behalf allege that the warrants, referred to in said paragraph nine, were purchased by the Kelso State

Bank from the United States National Bank of Portland in the manner and with the funds as alleged in complainants' amended bill of complaint herein, and not otherwise. Complainants further allege that, at the time of purchasing said warrants from the United States National Bank of Portland, the Kelso State Bank deposited said warrants with said United States National Bank of Portland to secure the deposits made by the county treasurer of Cowlitz County, in said Kelso State Bank, as alleged in the amended bill of complaint herein. [48]

WHEREFORE, complainants pray judgment in accordance with their amended bill of complaint herein.

LOREN GRINSTEAD,
GRINSTEAD & LAUBE,
WALLACE McCAMANT,
Solicitors for Complainants. [49]

State of Washington,
County of King,—ss.

Personally appeared before the undersigned authority, a notary public in and for the State of Washington, Loren Grinstead, as attorney in fact for the Fidelity & Deposit Company of Maryland, a corporation, one of the complainants named in the foregoing reply, who, being duly sworn says: that he has read the foregoing Reply, knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and, as to those matters, he believes it to be true.

LOREN GRINSTEAD.

Subscribed and sworn to before me this 15th day of December, A. D. 1921.

[Seal]

JO ROWE,

Notary Public in and for the State of Washington,
Residing at Seattle Therein. [50]

Exhibit "A."

PROOF OF CLAIM

LIQUIDATING

KELSO STATE BANK,

Kelso, Wash.

State of Washington,

County of Pierce,—ss.

Personally appeared before me, the undersigned, a Notary Public in and for said county and state, H. T. Hansen, who being duly sworn, says that the **FIDELITY & DEPOSIT COMPANY OF MARYLAND** is a corporation organized and existing under the laws of the State of Maryland, having its principal place of business at Baltimore, Maryland, and general agency office in the city of Tacoma, Washington; that he is the general agent and attorney in fact of said corporation and makes this proof of claim for and in its behalf; that he is authorized so to do and that the seal affixed hereto is the corporate seal of said corporation; that the Kelso State Bank, of Kelso, Washington, is fully indebted to said corporation in the sum of \$9213.20 upon the following claim, to wit:

The same being a portion of the balance due by said Kelso State Bank, of Kelso, Washington, to the Treasurer of Cowlitz County, Washington, which

portion of said account was on April 25th, 1921, duly and legally assigned to the said Fidelity & Deposit Company of Maryland by Linus Perry Brown as County Treasurer of the said Cowlitz County, which said assignment is hereto attached and made a part hereof.

All of which indebtedness is due and payable to said Fidelity & Deposit Company of Maryland, alone, it having given no endorsement or assignment of the same or any part thereof, and affiant further says that he knows of no offset or other legitimate or equitable defense to said claim, or any part thereof.

[Seal of Fidelity & Deposit Company of Maryland]

H. T. HANSEN,

General Agent and Attorney in Fact for Fidelity
& Deposit Company of Maryland.

Address: 214 Tacoma Bldg., Tacoma Wash.

Subscribed and sworn to before me this 25th
day of April, A. D. 1921.

[Notary Seal of Geo. B. Guyles.]

GEO. B. GUYLES,

Notary Public in and for the State of Washington,
Residing at Tacoma.

Original of above proof of claim filed and approved this 25th day of April, A. D. 1921.

CLAUDE P. HAY,

Deputy Supervisor of Banking Liquidating Kelso
State Bank. [51]

EXHIBIT "A"—Page 2.
PROOF OF CLAIM
LIQUIDATING
KELSO STATE BANK,
Kelso, Washington.

State of Washington,
County of Pierce,—ss.

Personally appeared before me, the undersigned, a Notary Public in and for said county and state, H. T. Hansen, who being duly sworn, says that the FIDELITY & DEPOSIT COMPANY OF MARYLAND is a corporation organized and existing under the laws of the State of Maryland, having its principal place of business at Baltimore, Maryland, and general agency office in the City of Tacoma, Washington; that he is the general agent and attorney in fact of said corporation and makes this proof of claim for and in its behalf; that he is authorized so to do and that the seal affixed hereto is the corporate seal of said corporation; that the Kelso State Bank, of Kelso, Washington, is fully indebted to said corporation in the sum of \$36852.86 upon the following claim, to wit:

The same being a portion of the balance due by said Kelso State Bank, of Kelso, Washington, to the Treasurer of Cowlitz County, Washington, which portion of said account was on April 25th, 1921, duly and legally assigned to the said Fidelity & Deposit Company of Maryland by Linus Perry Brown as County Treasurer of the said Cowlitz County, which said assignment is hereto attached and made a part hereof.

All of which indebtedness is due and payable to said Fidelity & Deposit Company of Maryland, alone, it having given no endorsement or assignment of the same or any part thereof, and affiant further says that he knows of no offset or other legitimate or equitable defense to said claim, or any part thereof.

[Corporate Seal Fidelity & Deposit Company of Maryland.]

H. T. HANSEN,
General Agent and Attorney in Fact for Fidelity
& Deposit Company of Maryland.

Address: 214 Tacoma Bldg., Tacoma, Wash.

Subscribed and sworn to before me this 25th
day of April, A. D. 1921.

[Notarial Seal, Warner Bruce.]

WARNER M. BRUCE,
Notary Public in and for the State of Washington,
Residing at Tacoma.

Original of above proof of claim filed and
approved this 25th day of April, A. D. 1921.

CLAUDE P. HAY,
Deputy Supervisor of Banking, Liquidating Kelso
State Bank. [52]

Exhibit "B."

**PROOF OF CLAIM
LIQUIDATING
KELSO STATE BANK,
Kelso, Wash.**

State of Washington,
County of Pierce,—ss.

Personally appeared before me, the undersigned, a Notary Public in and for said county and state, H. T. Hansen, who being duly sworn, says that the MARYLAND CASUALTY COMPANY is a corporation organized and existing under the laws of the State of Maryland having its principal place of business at Baltimore, Maryland, and general agency office in the City of Tacoma, Washington; that he is the general agent and attorney in fact of said corporation and makes this proof of claim for and in its behalf; that he is authorized so to do and that the seal affixed hereto is the corporate seal of said corporation; that the Kelso State Bank, of Kelso, Washington, is fully indebted to said corporation in the sum of \$18426.43, upon the following claim, to wit:

The same being a portion of the balance due by said Kelso State Bank, of Kelso, Washington, to the Treasurer of Cowlitz County, Washington, which portion of said account was on April 25th, 1921, duly and legally assigned to the said Maryland Casualty Company by Linus Perry Brown as County Treasurer of the said Cowlitz County, which said assignment is hereto attached and made a part hereof.

All of which indebtedness is due and payable to said Maryland Casualty Company, alone, it having given no endorsement or assignment of the same or any part thereof, and affiant further says that he knows of no offset or other legitimate or equitable defense to said claim, or any part thereof. [Seal of Maryland Casualty Company.]

H. T. HANSEN,
General Agent and Attorney in Fact for Maryland Casualty Company.

Address: 214 Tacoma Bldg., Tacoma, Wash.

Subscribed and sworn to before me this 25th day of April, 1921.

[Notary Seal] GEO. B. GUYLES,
Notary Public in and for the State of Washington, Residing at Tacoma.

Original of above proof of claim filed and approved this 25th day of April, A. D. 1921.

CLAUDE P. HAY,
Deputy Supervisor of Banking Liquidating Kelso State Bank.

Filed December 28, 1921. G. H. Marsh, Clerk.
[53]

AND AFTERWARDS, to wit, on Thursday, the 30th day of March, 1922, the same being the 22d judicial day of the regular March term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [54]

In the District Court of the United States for the
District of Oregon.

No. E—8573.

FIDELITY & DEPOSIT COMPANY OF MARY-
LAND, a Corporation, and MARYLAND
CASUALTY COMPANY, a Corporation,
Complainants,

vs.

THE UNITED STATES NATIONAL BANK
OF PORTLAND (OREGON), a Corporation,
and the KELSO STATE BANK, an Insolvent
Banking Corporation, and JOHN P. DUKE,
as Supervisor of Banking of the State of
Washington, in Charge of and Liquidating the
Assets of the Kelso State Bank,
Defendants.

**Order Authorizing United States National Bank
to Hold Warrants.**

NOW AT THIS TIME, this cause coming on
regularly for trial, the parties appearing by their
respective attorneys of record, and the defendant
Kelso State Bank and defendant John P. Duke,
as Supervisor, also appearing by Mr. T. H. Adams,
Special Deputy for the Liquidation of the Kelso
State Bank, and the defendant The United States
National Bank of Portland (Oregon), having pro-
duced in court and having offered to deliver into
the registry of this court the warrants described
in Exhibit “A” attached to and made a part of

its original answer and counterclaim, and by reference made a part of its amended answer and counterclaim, the principal sums thereof aggregating in amount thirty-one thousand nine hundred ninety-one and 59/100 dollars (\$31,991.59), as well as its cashier's check #129167 for the sum of five hundred forty-seven and 67/100 dollars, (\$547.67), and its cashier's check #132240 for the sum of ten hundred ninety and 05/100 dollars, (\$1090.05), the sums evidenced by such cashier's checks being the proceeds of the collection by the said bank of three diking district warrants of five hundred dollars (\$500.00) each and interest thereon to the date of such collection, of one hundred thirty-seven and 72/100 dollars (\$137.72). [55]

And it having been stipulated in open court between the plaintiffs and the said defendant, The United States National Bank of Portland (Oregon), and it having been conceded by the other defendants, through their failure to deny the allegations of the counterclaim set forth in the amended answer of The United States National Bank of Portland (Oregon) that such bank was and is, as to such warrants and as to the sums evidenced by such cashier's checks, a mere stakeholder between the parties and entitled to be discharged from further liability therein, except as hereinbefore set forth and to be paid from such fund its costs herein and its reasonable attorney's fees herein, and in this regard the Court finds that five hundred dollars (\$500.00) is a reasonable sum to allow the said defendant as its attorney's fees herein, and that the

said costs and the said attorney's fees be now deducted by the said Bank from the said funds in its possession and that as between the other parties hereto the said costs and attorney's fees be considered and treated as costs and taxed by the Court in its final decree, as to it shall then seem just and equitable.

And it having been further stipulated and agreed by and between all of the parties herein that said warrants and said cashier's checks and the proceeds of all thereof, less the sum of \$2.35, its costs herein, and the sum of \$500.00 attorney's fees, should be held by The United States National Bank of Portland, (Oregon), as bailee, subject to the further orders and the final decree of this Court herein, and that in the meantime The United States National Bank of Portland (Oregon), may, upon call of the officer charged with the liquidation of any of such warrants, forward the same for collection in the usual and customary manner and hold the proceeds thereof, less the usual customary and reasonable [56] collection charge, in lieu of such original warrants so called and collected.

NOW, THEREFORE, IT IS ORDERED AND DECREED as follows:

FIRST: That defendant The United States National Bank of Portland (Oregon) be now paid, out of and from the moneys and securities held by it as hereinbefore recited, the sum of five hundred dollars (\$500.00) on account of its attorney's fees and the further sum of \$2.35, its costs and disbursements herein and such sums as between the

other parties hereto to be considered as costs and to be taxed by the Court in its final decree as to it shall then seem just and equitable.

SECOND: That pending and subject to the further orders of this Court and the final decree of this Court upon the issues made or hereafter to be made between the plaintiffs herein and the defendants herein, other than The United States National Bank of Portland (Oregon), the said defendant, The United States National Bank of Portland (Oregon) hold the warrants described in Exhibit "A" attached to and made a part of its original answer and counterclaim herein and by reference made a part of its amended answer and counterclaim herein and the sums represented by its above-mentioned cashier's checks, less its said costs and attorney's fees, as provided for in the preceding paragraph hereof as a bailee for all of the other parties herein as their interests therein may appear upon the said final decree of this Court and to be delivered as in said final decree provided, and that in the meantime said The United States National Bank of Portland (Oregon) be, and it hereby is, authorized, upon call of the officer charged with the payment of any of such warrants, forward the same for collection in the usual and customary manner and hold the proceeds thereof, less the usual customary and reasonable collection charge instead and in lieu of such warrants and upon the same terms and conditions and subject to the same orders and decree as hereinbefore provided [57] for such original warrants.

THIRD: And that said defendant The United States National Bank of Portland (Oregon) be, and it hereby is, discharged from all liability of any kind and nature to each, any, or all of the other parties hereto, except as provided for in the preceding paragraphs hereof, in connection with the said warrants and the proceeds thereof.

Dated at Portland, Oregon, this 30th day of March, 1922.

R. S. BEAN,
Judge.

Filed March 30, 1922. G. H. Marsh, Clerk.
[58]

AND AFTERWARDS, to wit, on the 8th day of May, 1922, there was duly filed in said court an Opinion in words and figures as follows, to wit:
[59]

In the District Court of the United States for the District of Oregon.

FIDELITY & DEPOSIT COMPANY OF MARYLAND, a Corporation, and MARYLAND CASUALTY COMPANY, a Corporation,
Plaintiffs,

vs.

THE UNITED STATES NATIONAL BANK OF PORTLAND (OREGON), a Corporation, and THE KELSO STATE BANK, an Insolvent

Corporation, and JOHN P. DUKE, as Supervisor of Banking of the State of Washington, in Charge of Liquidating the Assets of The Kelso State Bank,

Defendants.

Opinion.

Portland, Oregon, Monday, May 8, 1922.

MEMORANDUM BY BEAN, D. J.:

The Kelso State Bank was closed by order of the Banking Department of the State of Washington on March 17, 1921. At that time the County Treasurer of Cowlitz County had a credit balance in the bank of \$64,460.96 for public funds which had been deposited by him in a general checking account at various times from January 25th to March 14, 1921, inclusive, and upon which the bank was paying interest on the daily balances. The deposits were covered by surety bonds executed by the plaintiff companies and after the closing of the bank they paid the amount to the county, taking assignments of its claim against the bank.

Among the items deposited by the County Treasurer on March 14th was a check of the Puget Mill Company on Pope & Talbot, of San Francisco, for \$32,897.98, and which was used by the Kelso State Bank on the same date in payment of an indebtedness due from it to The United States National Bank of Portland, thereby releasing certain county warrants held by the [60] latter bank. Possession of the warrants was, however, retained by the United States National Bank at the request of the

Kelso State Bank as security for such further deposits of county funds as might thereafter be made with it.

The plaintiffs, claiming to be subrogated to the rights of the County, bring this suit to recover such warrants on the ground that the Kelso State Bank was hopelessly insolvent and known to be such at the time of the deposit of the Pope & Talbot check, and that such check was used in the purchase or redemption of the warrants now in controversy.

The United States National Bank, disclaiming any interest in the warrants, has been eliminated from the case and the controversy is between the plaintiffs and the liquidator of the Kelso Bank, who claims the warrants as part of the general assets of the bank for distribution among its creditors.

The deposits made by the County Treasurer were general and not special (*Kies vs. Wilkinson*, 99 Fed. 900). Unless, therefore, the Pope & Talbot check was received by the bank under such circumstances as would make it a trustee thereof *ex maleficio*, the Treasurer and his successor in interest are only entitled to share with the other creditors in the distribution of the assets of the bank. When a bank, being hopelessly insolvent, receives a deposit with the knowledge that it cannot longer continue in business, but must close its door, it is such a fraud upon the depositor that he may rescind the contract of deposit and recover the amount so deposited, or the proceeds, if traced into the assets of the bank coming into the hands of the receiver or liquidator

(Wasson vs. Hawkins, 59 Fed. 233; Richardson vs. New Orleans Debenture Redemption Co., Ltd., [61] 102 Fed. 782; Brennan vs. Tillinghast, 201 Fed. 609). The mere fact, however, of insolvency at the time the deposit is received is not sufficient to confer the right of rescission. It will not arise, although the bank at the time of receiving the deposit was embarrassed and insolvent, if its officers had reason to believe that by continuing in business it might retrieve its fortune. The condition upon which the right of rescission is predicated is that the deposit was made when the bank was hopelessly insolvent and so circumstances as to constitute the receipt of the deposit a fraud upon the depositor (Brennan vs. Tillinghast, 201 Fed. 604; St. Louis & San Francisco Ry. Co. vs. Johnston, 133 U. S. 566.)

If the Kelso Bank was hopelessly insolvent at the time the deposit was made, and that fact was known to its officers, a fraud was undoubtedly committed upon the depositor for which there should be a remedy, if the deposit can be identified either in its original or altered form. These are questions of fact and the burden of proof is upon the complainants.

It is undoubtedly true, as was shown by the evidence, that the Kelso Bank was in fact insolvent at the time it received the deposit in question, in the sense that it did not possess sufficient solvent and marketable assets to meet its obligations; but it was a going concern and continued to receive deposits, pay checks and do a general banking busi-

ness for three days thereafter, until forced to close by order of the Banking Department. Its condition at the time the deposit was made differed in no substantial way from what it had been for a long time prior thereto, and so far as I can ascertain from the evidence the officers of the bank did not know or believe at that time that the bank was hopelessly and irretrievably [62] insolvent, but thought it would be able to continue in business.

The mere fact that it was financially embarrassed is not sufficient of itself to establish the fraud alleged. As was said by Judge Gray in *Quin vs. Earle*, 95 Fed. 732:

“A trader, whether a corporation or an individual, may be struggling in the straits of financial embarrassment, but with an honest hope of weathering the financial storm and of being eventually solvent. Property received by such an individual or concern during the period of such embarrassment becomes honestly theirs, and the fact that their expectations were unrealized, and their hopes not well founded, would not fasten upon them a fraud that would vitiate their business transactions.”

Banks in many instances no doubt continue to do their regular and ordinary business for long periods, though in a condition of actual insolvency, and it cannot surely be said that such a bank is to be regarded as a trustee *ex maleficio* for all deposits received in the due course of its business when there is no intention of closing its doors. There is often hope, if only the credit of the bank can be

kept up by continuing its ordinary business and by avoiding any act of insolvency, that affairs may take a favorable turn and thus suspension be avoided.

The evidence in this case fails to show any intent or expectation on the part of the officers to close the bank at the time the deposit was received, but rather that it would be able to continue business in the usual manner. It is undoubtedly true that Stewart, the cashier, knew of its embarrassed condition and that it had a large amount of [63] outstanding paper which it had carried for a long time, some of which was uncollectible, and a portion of which was of doubtful value, but the evidence does not show that he knew or believed that it was hopelessly insolvent at the time; on the contrary, the evidence indicates that he honestly believed, perhaps mistakenly, that the bank would be able to maintain its credit, surmount its difficulties, and continue in business.

It is claimed by the plaintiffs that the Pope & Talbot check was used by the Kelso Bank to purchase the warrants in controversy, and that such warrants were left with the United States National Bank as security for deposits of county funds in the Kelso Bank. The evidence is clear that the purpose of the Kelso Bank in leaving the warrants with the United States Bank was not to secure deposits of county funds already made, but in the hope that it would be able to obtain future deposits of such funds. It is equally clear that the warrants were not in fact purchased by the Kelso Bank

from the United States Bank. They did not belong to the latter bank. They were the property of the Kelso Bank and in September and December, 1920, were deposited by it with the United States Bank as collateral security for loans made by it to the latter. The transactions were regarded as loans by both banks, they were renewed from time to time and interest charged and paid thereon. They were carried as loans on the books of the lending bank and were so reported by it. The so-called repurchase agreement executed by the Kelso Bank at the time the warrants were delivered to the United States Bank were merely a convenient method of evidencing the transaction, and did not change or alter the actual understanding and intention of the parties. When, therefore, the Kelso [64] Bank paid the loan it simply repossessed itself of that which belonged to it, but which had been pledged to secure the loan.

It follows that the bill should be dismissed and it is so ordered.

Filed May 8, 1922. G. H. Marsh, Clerk. [65]

AND AFTERWARDS, to wit, on Monday, the 8th day of May, 1922, the same being the 55th judicial day of the regular March term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [66]

In the District Court of the United States for the
District of Oregon.

No. E—8573.

May 8, 1922.

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND, a Corporation, and MARY-
LAND CASUALTY COMPANY, a Corpora-
tion,

vs.

THE UNITED STATES NATIONAL BANK OF
PORTLAND, OREGON, a Corporation, and
THE KELSO STATE BANK, an Insolvent
Corporation, and JOHN P. DUKE, as Super-
visor of Banking of the State of Washington.

Final Decree.

This cause was heard by the Court upon the pleadings and the proofs, plaintiff appearing by Mr. Wallace McCamant, Mr. Thomas E. Davis and Mr. Loren Grinstead, of counsel, and defendant United States National Bank of Portland by Mr. Palmer Fales, of counsel, and defendants The Kelso State Bank and John P. Duke by Mr. A. L. Miller, of counsel. And the Court having heard the evidence adduced, and the arguments of counsel, upon consideration thereof—

IT IS ORDERED that the bill of complaint herein be, and the same is hereby dismissed, and that defendants do have and recover of and from said plaintiffs their costs and disbursements here-

in, taxed at \$——, and that said defendants have execution therefor.

R. S. BEAN,
Judge.

Filed May 8, 1922. G. H. Marsh, Clerk. By E.
M. Morton, Deputy. [67]

AND AFTERWARDS, to wit, on the 22d day of
July, 1922, there was duly filed in said court
a petition for appeal, in words and figures as
follows, to wit: [68]

In the District Court of the United States for the
District of Oregon.

IN EQUITY —No. E—8573.

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND, a Corporation, and MARY-
LAND CASUALTY COMPANY, a Corpora-
tion,

Complainants.

vs.

UNITED STATES NATIONAL BANK OF
PORTLAND, OREGON, a Corporation,
and the KELSO STATE BANK, an Insolvent
Banking Corporation, and JOHN P. DUKE,
as Supervisor of Banking of the State of Wash-
ington, in Charge of and Liquidating the As-
sets of the KELSO State Bank,

Defendants.

Petition on Appeal and Order Allowing Same.

The above-named complainants, Fidelity and Deposit Company of Maryland, a corporation, and Maryland Casualty Company, a corporation, feeling aggrieved by the decree rendered and entered in the above-entitled action on the 8th day of May, 1922, do hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the assignment of errors filed herewith, and pray that their appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California, under the rules of such Court in such cases made and provided.

AND your petitioners further pray that the proper order relating to the security required of them to perfect this appeal be made.

Dated this 21st day of July, 1922.

McCAMANT & THOMPSON and
GRINSTEAD & LAUBE,

Solicitors for Complainants and Appellants.

The foregoing petition granted, and the appeal allowed, upon giving bond, conditioned as required by law in the sum of \$500.00 dollars (\$———.)

Dated this 21st day of July, 1922.

R. S. BEAN.

Filed July 22, 1922. G. H. Marsh, Clerk.
[68½]

AND AFTERWARDS, to wit, on the 22d day of July, 1922, there was duly filed in said court, an assignment of errors, in words and figures as follows, to wit: [69]

In the District Court of the United States for the District of Oregon.

IN EQUITY—No. E—8573.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation, and MARYLAND CASUALTY COMPANY, a Corporation,

Complainants,

vs.

UNITED STATES NATIONAL BANK OF PORTLAND, OREGON, a Corporation, and THE KELSO STATE BANK, an Insolvent Banking Corporation, and JOHN P. DUKE, as Supervisor of Banking of the State of Washington, in Charge of and Liquidating the Assets of the Kelso State Bank,

Defendants.

Assignment of Errors.

Come now the complainants in the above-entitled cause and file the following assignment of errors upon which they will rely upon their prosecution of the appeal in the above-entitled cause,

from the decree made by this Honorable Court on the 8th day of May, 1922.

I.

That the Court erred in dismissing the amended bill of complaint of these petitioners and appellants for want of equity at complainants' costs.

II.

That the Court erred in finding the issues in favor of the defendants, Kelso State Bank, an insolvent banking corporation, and John P. Duke as Supervisor of Banking of the State of Washington in charge of and liquidating the assets of the Kelso State Bank.

III.

That the decree is against the manifest weight of evidence.

IV.

That the decree is contrary to law. [70]

V.

That the Court erred in failing to find the issues in favor of complainants on the first cause of action set out in the amended bill of complaint herein.

VI.

That the Court erred in decreeing that the warrants referred to and described in the amended bill of complaint be delivered to the defendant, John P. Duke, as Supervisor of Banking of the State of Washington.

VII.

That the Court erred in failing to find that the complainants were entitled to the possession of

the warrants described in the amended bill of complaint.

VIII.

That the Court erred in failing to find in favor of the complainants on the second cause of action stated in the amended bill of complaint herein.

IX.

That the Court erred in failing to find in favor of the complainants on the third cause of action stated in the amended bill of complaint herein.

X.

That the Court erred in holding that complainants were not entitled to a preferred claim against the defendants, Kelso State Bank and John P. Duke, as Supervisor of Banking of the State of Washington in charge of and liquidating said bank.

XI.

That the Court erred in holding that the warrants described in said complaint were not deposited with the United States National Bank of Portland, Oregon, as security for County [71] funds deposited in the Kelso State Bank by the County Treasurer of Cowlitz County, Washington.

XII.

That the Court erred in failing to find that the warrants described in the amended bill of complaint were deposited with the United States National Bank of Portland, Oregon, as security for deposits of public moneys which the County Treasurer of Cowlitz County, Washington, had on deposit in the Kelso State Bank on the 14th day of March, 1921.

XIII.

That the Court erred in holding that the officers of the Kelso State Bank did not believe that said bank was hopelessly insolvent on and prior to the 14th day of March, 1921, and at the time when the deposits of public moneys belonging to Cowlitz County, Washington, were made in said bank by the County Treasurer of Cowlitz County, Washington.

XIV.

That the Court erred in failing to find the warrants described in the amended bill of complaint were purchased or repurchased from the United States National Bank of Portland, Oregon, by the Kelso State Bank with moneys belonging to Cowlitz County, Washington, which moneys were trust funds in the hands of said Kelso State Bank.

WHEREFORE appellants pray that said decree be reversed and that the District Court of the United States for the District of Oregon be instructed to enter such decree as is proper on the record.

McCAMANT & THOMPSON and

GRINSTEAD & LAUBE,

Solicitors for Appellants.

Filed July 22, 1922. G. H. Marsh, Clerk. [72]

AND AFTERWARDS, to wit, on the 22d day of July, 1922, there was duly filed in said court a bond on appeal, in words and figures as follows, to wit: [73]

In the District Court of the United States for the
District of Oregon.

IN EQUITY —No. E—8573.

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND, a Corporation, and MARY-
LAND CASUALTY COMPANY, a Corpora-
tion,

Complainants,

vs.

UNITED STATES NATIONAL BANK OF
PORTLAND, OREGON, a Corporation, and the
KELSO STATE BANK, an Insolvent Bank-
ing Corporation, and JOHN P. DUKE, as
Supervisor of Banking of the State of Wash-
ington, in Charge of and Liquidating the Assets
of the Kelso State Bank,

Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS,
that the Fidelity and Deposit Company of Mary-
land, a corporation, and the Maryland Casualty
Company, a corporation, as principals, and AMER-
ICAN SURETY COMPANY OF NEW YORK, a
corporation, authorized and existing under the laws
of the State of New York, authorized to become
surety on bonds and undertakings required by the
laws of the United States, as surety, are held and
firmly bound unto the Kelso State Bank, an in-
solvent banking corporation, and John P. Duke,

as Supervisor of Banking of the State of Washington, in charge of and liquidating the assets of the Kelso State Bank, in the sum of Five Hundred Dollars (\$500.00), lawful money of the United States, to be paid to them or their respective successors, for which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and each of our successors and assigns by these presents.

WHEREAS the above-named Fidelity and Deposit Company of Maryland, a corporation, and Maryland Casualty Company, a corporation, have prosecuted an appeal to the United States [74] Circuit Court of Appeals for the Ninth Circuit to reverse the decree of the District Court of the United States for the District of Oregon in the above-entitled cause.

NOW, THEREFORE, the condition of this obligation is such that if the above-named Fidelity and Deposit Company of Maryland and Maryland Casualty Company shall prosecute their said appeal to effect, and answer all costs if they fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREFORE, we have caused this instrument to be signed in our combined names, by our respective agents and attorneys this 22d day of July, A. D. 1922.

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND,

By GRINSTEAD & LAUBE,

Its Attorneys.

MARYLAND CASUALTY COMPANY,
By GRINSTEAD & LAUBE,

Its Attorneys.

AMERICAN SURETY COMPANY OF
NEW YORK,

By W. A. KING, (Seal)

Resident Vice-President.

Attest: G. M. SMITH,

Resident Asst.-Secretary.

The within bond is approved, both as to sufficiency and form, this 22d day of July, A. D. 1922.

R. S. BEAN,

Judge.

Filed July 22, 1922. G. H. Marsh, Clerk. [75]

AND AFTERWARDS, to wit, on the 24th day of July, 1922, there was duly filed in said court, a Praecipe for Transcript, in words and figures as follows, to wit: [76]

In the District Court of the United States for the District of Oregon.

IN EQUITY—No. E—8573.

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND, a Corporation, and MARY-
LAND CASUALTY COMPANY, a Corpora-
tion,

Complainants,

vs.

UNITED STATES NATIONAL BANK OF
PORTLAND, OREGON, a Corporation, and the

KELSO STATE BANK, an Insolvent Banking Corporation, and JOHN P. DUKE, as Supervisor of Banking of the State of Washington, in Charge of and Liquidating the Assets of the Kelso State Bank,

Defendants.

Praeceptum for Transcript of Record.

In the preparation of the record on appeal in the above-entitled action, please incorporate into the transcript the following papers and documents only:

1. Amended bill of complaint.
2. Answer of the defendants Kelso State Bank and John P. Duke, as Supervisor of Banking of the State of Washington, to the amended bill of complaint.
3. Reply of complainants to the answer of defendants, Kelso State Bank and John P. Duke, as Supervisor of Banking of the State of Washington.
4. The order made and entered by the above-entitled court on the 30th day of March, 1922, relative to the United States National Bank of Portland retaining said warrants and money in its possession until the further order of the Court.
5. The statement of evidence when settled (including plaintiff's exhibits numbered 1 to 32, inclusive, and Defendants' Exhibits "A," "B," "C" and "D"). [77]
6. The opinion or decision of the Court dated May 8, 1922.
7. The decree of the above court.

8. The petition on appeal, order allowing appeal and fixing amount of bond, and bond on appeal.

9. Citation on appeal.

Dated this 22d day of July, 1922.

McCAMANT & THOMPSON and
GRINSTEAD & LAUBE,

Attorneys for Appellants.

Service of the foregoing praecipe and receipt of copy acknowledged this 22d day of July, 1922.

A. L. MILLER,

Attorney for Appellees.

Filed July 24, 1922. G. H. Marsh, Clerk. [78]

AND AFTERWARDS, to wit, on the 17th day of August, 1922, there was duly filed in said court a statement of the evidence, which with the exhibits specified in the order of court filed August 22, 1922, is in words and figures as follows, to wit: [79]

In the District Court of the United States for the District of Oregon.

E—8573.

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND, a Corporation, and MARY-
LAND CASUALTY COMPANY, a Cor-
poration,

Complainants,

vs.

UNITED STATES NATIONAL BANK OF
PORTLAND, OREGON, a Corporation, and

the KELSO STATE BANK, an Insolvent Banking Corporation, and JOHN P. DUKE, as Supervisor of Banking of the State of Washington in Charge of and Liquidating the Assets of the Kelso State Bank,
Defendants.

Statement of Evidence.

Comes now the complainants and the appellants in the above-entitled action, and present this, their statement of the case, and ask to have the same duly allowed, settled and signed as and for the statement of the proceedings in said cause at the trial, and as containing all the evidence material to the hearing of the appeal in said cause, except the original exhibits introduced in evidence at the trial of said cause, being Plaintiffs' Exhibits 1' to 32, inclusive, and Defendants' Exhibits "A" to "D," inclusive.

And as to said exhibits, said appellants respectfully request this Court to order the original exhibits on file herein to be certified by the clerk of this Court and to be by him sent to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, as part of the record in this case.

McCAMANT & THOMPSON and
GRINSTEAD & LAUBE,

Solicitors for Appellants. [80]

In the District Court of the United States for the
District of Oregon.

E—8573.

FIDELITY & DEPOSIT COMPANY OF MARY-
LAND, a Corporation, and MARYLAND
CASUALTY COMPANY, a Corporation,
Plaintiffs,

vs.

THE UNITED STATES NATIONAL BANK OF
PORTLAND, (OREGON), a Corporation,
and THE KELSO STATE BANK, an Insol-
vent Corporation, and JOHN P. DUKE, as
Supervisor of Banking of the State of Wash-
ington, in Charge of Liquidating the Assets
of the Kelso State Bank,

Defendants.

STATEMENT OF EVIDENCE.

The above-entitled cause came on for trial before
Honorable Robert A. Bean, Judge of the United
States District Court, for the District of Oregon,
at Portland, Oregon, on March 29th, 1922, at ten
o'clock A. M. of said day.

The plaintiffs appeared by Mr. Wallace McCamant,
Mr. Loren Grinstead, and Mr. T. E. Davis, their at-
torneys.

The defendant, The United States National Bank
of Portland, by Mr. Palmer L. Fales, its attorney,
and Mr. A. L. Miller, attorney for the remaining
defendants. [81]

By order of the Court, subject to the stipulation of counsel, the warrants in question, involved in this controversy, and the proceeds thereof, were ordered to be held by the defendant, The United States National Bank of Portland (Oregon), pending the final determination of this litigation between all parties. (Test'y 2.)

Testimony was introduced on behalf of plaintiffs as follows:

Testimony of T. H. Adams, for Plaintiffs.

T. H. ADAMS, being first duly sworn, testified:

On direct examination, in answer to interrogatories propounded by Mr. McCAMANT, the witness testified:

I am special deputy supervisor of Banking in the State of Washington in charge of the liquidation of the Kelso State Bank, being a deputy under Mr. Duke, one of the defendants.

I took charge of the Kelso State Bank on April 27th, 1921. (Test'y 3.)

That was a little over a month after it closed. I am the custodian of the books and papers of the Kelso State Bank. As to having a list of the assets and liabilities of the Bank as of date February 21, 1921, I have the commissioner of Bankings report to the Court on that day. The law providing for a Supervisor of Banking went into effect shortly after the closing of the Kelso State Bank, and the officers so designated formerly was Commissioner of Banking. This was Mr. Claude B. Hay, and he had closed the bank and had made a report to the

(Testimony of T. H. Adams.)

Superior Court as required by law dated March 17th. I have a copy of that report. (Test'y 4.)

The report referred to, prepared by Mr. Hay, was produced [82] by the witness, who testified that such report bore the signature of Mr. Hay.

The report was then offered in evidence and marked Plaintiffs' Exhibit 1. (Test'y 6.)

The witness further testified:

I am familiar with the signature of Mr. Corothers, the President of The Kelso State Bank, and the signature appearing on the photographic copy of the report of the condition of The Kelso State Bank of date February 21, 1921, is in my opinion the genuine signature of Mr. Corothers. I have no occasion to doubt that that report is a photographic copy of the original genuine report. Mr. Corothers was the president of the institution for a considerable time before it closed.

Photographic copy of report was then offered in evidence and marked Plaintiffs' Exhibit 2. (Testimony 7.)

The attention of the witness was called particularly to the following language contained in the report: "Warrants and bonds sold with agreement to repurchase \$86,537.14," and the witness was asked to state to the Court how the bank carried such transactions as to turning warrants over to another bank under an agreement to repurchase them.

The witness testified in response to the question:

On that day, the bank's general ledger showed

(Testimony of T. H. Adams.)

debit warrants \$728.43, credit warrants \$103.95, Balance \$91,765.05 on the upper half of the ledger among the assets. Among the liabilities it is recited on that date: Debit warrants \$103.95, balance \$86,537.14. It is warrants sold with the repurchase agreement. That is to say, that on that date, there were warrants in the possession of other banking institutions aggregating \$86,000.00 and some odd thousand dollars which the [83] Kelso State Bank was obligated to buy back, which was just carried in the same form as its rediscounts. (Testimony 8.)

I have at least some of the repurchase agreement given by the Kelso State Bank to the United States National Bank covering the particular warrants concerned in this case. I now produce the original dated December 6, 1920, and December 8, 1920. The renewals I do not know that I have, Referring to the instrument of date December 6, 1920, purporting to be signed Kelso State Bank by George T. Plamonden, Assistant Cashier, in my opinion, the signature appearing thereon is genuine; I am familiar with Mr. Plamonden's signature. (Testimony 9.)

The paper identified by the witness was then offered in evidence and marked Plaintiffs' Exhibit 3. (Testimony 9.)

The witness produced the agreement of date December 8, 1920, and the Court asked the witness to explain the pencil memorandum appearing in the

(Testimony of T. H. Adams.)
margin of Plaintiffs' Exhibit 4 to which the witness replied:

I had noticed that. While I have not checked it up, I assume that to be some warrants that were called by the County Treasurer and which were deducted and sent to the County Treasurer. (Testimony 10.)

In my opinion, those were taken out of the warrants with the United States Bank. I do not know who made that memorandum. I suppose it was the United States National Bank. If it is important, I could tell. (Testimony 11.)

I have not been able to find the renewals; but it is my [84] understanding that the renewals were instruments of the same purport. I find reference to the renewals in the correspondence; and it is my idea that the renewals are with that document that you requested me to produce which I could not, the receipt, or whatever you may be pleased to term it, that the United States National Bank issued on behalf of the County Treasurer. It is my idea that they are all together. I do not think I have ever seen the renewal agreements. (Testimony 11.)

Witness having produced certain slips which are in the files, attached to the instruments Plaintiffs' Exhibits 3 and 4, those slips were then offered in evidence and marked Plaintiffs' Exhibit 5. (Testimony 12.)

Answering the question propounded by the Court about the memorandum in part, that the total amount the Kelso State Bank received credit for

(Testimony of T. H. Adams.)

in the amount in pencil, either when they check them up the Kelso State Bank or the United States National Bank made that correction. (Testimony 12.)

Further testifying, the witness produced a statement of the account of Linus Perry Brown, County Treasurer, with Kelso State Bank, for the entire term of office of said County Treasurer. That is the original ledger sheets showing the statement as it appears on the books of the bank. I have a copy prepared in my office under my direction which covers the whole account. (Testimony 13.)

Statement of account of County Treasurer with Kelso State Bank from January 27th, 1921, to March 17, 1921, was then offered in evidence and marked Plaintiffs' Exhibit 6. (Testimony 13.)

Further testifying witness said: I have not prepared a statement showing the amount of cash [85] on hand at the end of the day in the Kelso State Bank for every day beginning with the 27th of January, 1921, down to the time the bank closed, but the general ledger shows that for itself. This statement gives the cash on hand but included therein are any unpaid checks, which are usually termed cash items. They are combined in this ledger. They read as follows: January 27th, \$27,726.02; January 28th, \$27,570.91; January 29th, \$27,538.28, with \$5.00 added in a brace additional; that is evidently the entry was made and then a discovery of an error of \$5.00, which was run in with a brace. January 31, \$28,414.66; on February 1, \$25,272.45; February 2, \$24,709.68; February 3,

(Testimony of T. H. Adams.)

\$24,391.10; February 4, \$24,101.67; February 5, \$22,661.36; February 7, \$23,092.84; February 8, \$23,-769.20; February 9, \$23,153.97; February 10, \$22,-777.45; with \$1.45 run in with a brace as before; February 11, \$23,104.97, with \$5.00 in a brace again; February 14, \$24,156.20; February 15, \$24,775.79; February 16, \$23,984.00; February 17, \$23,273.07; February 18, \$20,971.46; February 19, \$21,761.10; February 21, \$21,067.81; February 23, \$21,821.19; February 24th, \$19,459.13; February 25, \$20,612.40; February 26th, \$19,062.53; February 28, \$18,417.22; March 1, \$18,062.47; March 2, \$17,792.97; March 3, \$18,553.68; March 4, \$17,983.61; March 5, \$16,031.75 with \$25.00 in a brace additional; March 7, \$16,-735.45; March 8, \$22,710.30; March 9, \$22,162.33; March 10, \$17,900.15; March 11, \$17,337.78; March 12, \$17,625.91; March 13—that is corrected in pencil, the 14th,—it was stamped in 13 and is corrected to the 14th,—March 14th, \$20,471.55; March 15, \$20,072.29; March 16, \$18,897.50. Without checking I could not tell whether that is 97 or 99; it is blurred. March 17th, \$17,189.32. (Testimony 14, 15.) [86]

Some of that \$17,000 dollars was made up of cash items, that last day's amount. Looking at the examiner's report for that day, which is exhibit 1, it appears from that report that the cash items amount to \$861.27. They were not all collected. There is one item still uncollected of \$174 of that, war saving stamps, turned in by Mr. Stewart as administrator or guardian, at any rate as an officer of an estate, which could not be collected, and

(Testimony of T. H. Adams.)

which we had to charge back and turn over to the administrator *de bonis non*, or to his successor; at any rate, and file our claim for an overdraft. Mr. Stewart, as I understand, turned these in to cover an overdraft which he had made as this officer; I cannot remember whether it was as administrator or guardian. (Testimony 16.)

We have filed a claim against the estate to offset this \$174.00; gave the state a credit balance; eliminating that it had a debit balance; and we filed our claim for the debit balance. I think the estate is solvent and that will eventually come in for whatever our claim for the debit balance is. There are perhaps some other small items that I am unable to answer for, but I do not think any considerable amount. Our claim is for \$60.00 and that would make a difference of about \$114.00 in this war savings account which will, in my opinion, eventually come in. (Testimony 16.)

Witness produced deposit slips showing the deposits made by the County Treasurer on March 10th, and March 14th, 1921; showing that the deposits of March 10th amounted to \$6,572.55; and on March 14th, \$35,337.57. (Testimony 17.)

List dated March 10th, 1921, offered in evidence and marked Plaintiffs' Exhibit 7. (Testimony 18.)

List dated March 14th, 1921, offered in evidence and marked [87] Plaintiffs' Exhibit 8. (Testimony 18.)

In response to inquiry, the witness produced Commissioner's copy of letter from Bank Commissioner

(Testimony of T. H. Adams.)

to F. L. Stewart of date December 15, 1919, signed L. H. Moore, Deputy Commissioner; and testifying in regard to correspondence passing between Commissioner and Kelso State Bank, the witness said:

Before we pass that, if I may answer, the letters from the Commissioner to Mr. Stewart are from the Division of Banking to Mr. Stewart and the copies of the Examiner's report left with the Kelso State Bank I have not been able to find. I have never seen them. I do not know where they are; but the most of these, if not of all of them, I have the copies which we brought from the office at Olympia, which will not be disputed. (Testimony 19.)

Witness produced copy of letter from Banking Department State of Washington to F. L. Stewart, Cashier Kelso State Bank, dated December 15, 1919, which was offered in evidence and marked Plaintiffs' Exhibit 9. (Testimony 20.)

Witness produced copy of Bank Examiner report of examination made of Kelso State Bank on November 18, 1920, by H. S. Bennett and Ralph R. Knapp, Bank Examiners of the State of Washington, and summary of report at the end thereof was offered in evidence and marked Plaintiffs' Exhibit 10. (Test'y 21.)

Witness produced copy of letter from Bank Commissioner to F. L. Stewart, Cashier Kelso State Bank, dated February 1, 1921, which was offered in evidence and marked Plaintiffs' Exhibit 12. (Testimony 22.)

(Testimony of T. H. Adams.)

Witness produced copy of letter from Bank Commissioner to F. M. Corothers, President Kelso State Bank, dated March 7, 1921, which was offered in evidence and marked Plaintiffs' Exhibit 12. (Testimony 22.) [88]

Witness produced copy of a second letter from Bank Commissioner to F. M. Corothers, President of Kelso State Bank of date March 7, 1921, which was offered in evidence and marked Plaintiffs' Exhibit 13. (Testimony 23.)

Plaintiffs' Exhibit 12 and 13 were read to the Court. (Testimony 23, 24, 25.)

Witness produced copy of letter from Bank Commissioner to Fred L. Stewart, Cashier Kelso State Bank, dated March 7, 1921, which was offered in evidence and marked Plaintiffs' Exhibit 14. (Testimony 25.)

Exhibit 14 was read to the Court. (Testimony 24.)

Counsel for Plaintiffs then offered in evidence the call for an assessment for one hundred per cent of the stock of the Kelso State Bank, made by Bank Commissioner under date March 7, 1921, which was offered in evidence and marked Plaintiffs' Exhibit 15. (Testimony 25.)

Counsel for plaintiffs produced letter written by witness of date October 13, 1921, which was identified by the witness, and was offered in evidence and marked Plaintiffs' Exhibit 16. (Testimony 25, 26.)

Testifying as to what dividends the Kelso State Bank has paid during the period of liquidation, the

(Testimony of T. H. Adams.)

witness said that a twenty per cent dividend had already been paid; and in response to the inquiry as to the judgment of witness as to what would be paid in the future, witness said: (Testimony 26.)

It very *large* depends on the outcome of this suit. There is not any other one item on which so much hinges as this suit. This, of course, is not the only suit. We have another suit against them on Mr. Stewart's bond involving \$20,000.00, which we may lose. We then have a suit in contemplation against the [89] Board of Directors, and in addition to that we are involved in quite a good deal of litigation over claims which have been disapproved, the outcome of which is problematical. Some of these cases have been tried and some of them we have won and some of them we have not had a decision in yet. If I might be permitted to sum it up about this way, that if the worst happened to us that could happen or that might happen in this matter, the litigations, and so on, that we might pay only ten or fifteen per cent more. If the best happened that could happen, we might pay thirty-five or forty per cent more. Eliminating the possibility of suit against the Board of Directors, I would say that forty per cent more is the maximum. (Testimony 27.)

In giving these figures, I have figured in returns from assessments levied on the stockholders; of which everything has been collected except Stewart's. In my opinion, Mr. Stewart's assessment cannot be collected. (Testimony 27, 28.)

(Testimony of T. H. Adams.)

The claims that were approved prior to the payment of dividends amount to \$348,387.37 general claims; in addition to that there will be about \$40,000.00 that already have or will be presented; of which \$1,054.00 preferred claims have been approved to date; making a total of about \$350,000.00 approximately of all claims that have been approved. (Testimony 28.)

Turning to the claims rejected. I find that at that time I rejected \$15,004.16 of preferred claims. Of these \$15,004.16, \$5,038.34 has been approved as a general claim, and \$1,101.50 has been approved through suit as a general claim; \$2,028.67 through litigations has been approved as a general claim; \$6,066.09 has been approved as to a little less than half of it as a general claim; those are preferred claims that were [90] rejected at the time, being thought to be a preference and they were rejected as a preference, but which, some voluntarily and some amicably, and some through litigation have been approved as general claims since that report was filed. \$750.00 has been rejected definitely. I have no statement as to the extra amount of claims that have been approved since the report was filed, because those come in from time to time and we hang them on a hook until we get enough to write them up. (Testimony 29.)

In the general claims rejected at that time, there is \$52,192.25, some of which has been wiped out. Some of these claims making up that amount are still being asserted by the claimant; and some of

(Testimony of T. H. Adams.)

them have been determined. For instance, one item \$11,930.00 a claim filed by the United States National Bank has been eliminated. Practically all of that \$52,000.00 is still being asserted by the claimant as valid except the item of \$11,930.00 of the United States National Bank. Here is one item of \$14,000.00 of S. A. George which is in the Courts at this time, and of John Roth \$100.00, which are a part of the \$52,000.00. To sum it up substantially, the aggregate of the claims that have been approved is something in excess of \$360,000.00; and there is about \$40,000.00 more claims that are asserted and still undetermined. (Testimony 30.)

During the year that the bank has been in liquidation, the cash collections I cannot give accurately because I have no documents that I think of here that would tell me. We have paid out in dividends twenty per cent of this \$360,000.00; and a little more than \$1,000.00 preferred; which would amount to approximately \$73,000.00 that has been paid in dividends, including the preferred. (Testimony 30, 31.) [91]

There is in cash on hand now something more than \$30,000.00. (Testimony 31.)

Testifying as to the condition of the assets of the estate at the present time, the witness said:

We have not collected substantially all that is collectable. The readily collectable part, of course, is already made; but we have some long time paper that is not yet due and some paper which is due which is being paid in in installments. We have

(Testimony of T. H. Adams.)

some warrants which have not yet been called; we have a few bonds which are getting a little better all of the time; and not selling them, and some mortgages that are good, I think, yet I have not been able to realize on them yet. But I would not want to hazard a guess as to the amount of collections which will be made on those assets, or how much more money will be collected by the estate on those assets apart from the result of the litigation with the directors. (Testimony 31.)

Of the one hundred per cent assessment upon the stockholders a little more than half of it has been collected. Mr. Stewart held between eleven and twelve thousand dollars in par value of the stock. The bank was capitalized at \$25,000.00; and we collected between twelve and thirteen thousand dollars from the stockholders. (Testimony 32.)

When the bank closed its doors, the total bills receivable amounted to, as shown by the examiner's reports in evidence, on March 17, \$320,566.64; and an item of \$2,000.00 was added by the Commissioner after the closing of the bank, and that amount is included in the revised and corrected total. (Testimony 32, 33.)

Of these bills receivable, I would say that from forty to [92] fifty per cent of them are uncollectable. I will qualify that by adding, that some of them we have classed as uncollectable have been compromised, fifty cents on the dollar, something like that, we find that all of the time; now and then possible to realize something out of what we thought

(Testimony of T. H. Adams.)

was valueless. It is useless in my judgment to sue a great many of the makers of those notes, and yet that opinion is subject to correction by finding something now and then that can be reached. (Testimony 33.)

Other than the bills receivable, the bank had in the way of assets some bonds and warrants, it had its bank house and furniture, which has been sold since for \$27,000.00. The bonds and warrants I spoke of eliminating those involved in this case amount to between twenty and twenty-five thousand dollars. In addition to the assets already enumerated, the bank had cash on hand amounting to some \$17,000.00; of which there were overdrafts amounting to \$4,438.15. Of those I have collected practically all except the overdraft of the Cashier, Mr. Stewart, which is uncollectable, in a claim of the Federal Reserve Bank which was rejected. The Stewart overdraft amounted to about \$3,300.00. The most of the overdraft had not been collected, unless the Federal Reserve Bank failed to file a claim on which, which I hold they are not entitled to a claim on it, and they have not sued me yet. If that is offset, or failed to develop as a claim against the bank, the draft would be practically all collected in that way. (Testimony 34.)

In giving the amount of loans and discounts by the bank, I neglected to include in that the real estate loans which I carried under a separate caption. As revised and corrected after closing the real estate loans are \$45,582.00. (Testimony 25.)

(Testimony of T. H. Adams.)

Of the real estate loans, the major portion of it is still [93] uncollected. In my judgment, as to how much of them will be collected, if you will allow me to reckon as I think of them, there is one item of \$800.00 that will not be collected; there is an item of about \$300.00 that will not be collected; there is an item of \$1,000.00 that is problematical; and there is an item of \$3,800.00 and a few dollars that is very doubtful. Something will be realized on it, but the mortgaged property is not worth the amount of the mortgage. The balance that has not been collected I believe will be collected as I think of it now. (Testimony 35.)

I cannot state anywhere near accurately what proportion of the total general bills receivable, \$322,000.00, approximately, has been collected in the year that the bank has been closed, during the period of liquidation. (Testimony 35.)

Of Mr. F. L. Stewart's indebtedness to the bank, there is one \$6,000.00 item and two items of about \$5,000.00. I am speaking of the notes Mr. Stewart had in the bank. He was not indebted to the bank in the sum of over \$100,000.00 in one way or another. He had placed in the bank certain paper, and *in way* or another had taken credit for that, which I am unable to realize on, if I can realize on at all; but there are some \$55,000.00 that I have based a claim against the bonding company on as having been illegal. Unless I can recover from the bonding company in that suit, that \$55,000.00 is hopelessly lost. I have heard the administrator

(Testimony of T. H. Adams.)

of the Stewart estate say that Stewart is absolutely insolvent; and he told me it was useless to file a claim; and that is my judgment of it. (Testimony 36.)

Of the \$322,000.00 of bills receivable in the bank, there is at least \$100,000.00 that is absolutely hopeless. [94] I think that the total amount I have been able to collect on bills receivable has not exceeded \$50,000.00 after a year's efforts. It would be difficult for me to describe the efforts I have put forth during the past year to collect those bills receivable; I have done everything that I thought would bring results. I have not pressed some paper that I thought was good for a good, long while, not since the filing of this suit for the reason that I concluded I could not use the money if I had it, and if it were drawing interest, I was just as well off than if I had the money; that much better off, I mean. That is on paper that I consider good. I could not state how much that amounts to; only I know that in time, where we could renew a note and get some security and get it in proper shape, that I have not worried about it, the time that it would run. I have handled probably twenty or twenty-five thousand dollars, and there is probably some more that does not just come into my mind at this time. (Testimony 37.)

Of the claims that I regard as uncollectable, none that I think of right now, originated subsequent to January 27th, 1921. (Testimony 37.)

The condition of the bank on March 17, 1921, in

(Testimony of T. H. Adams.)

my opinion was practically identical with its condition on January 27th, 1921, and for a long time prior to that. (Testimony 37, 38.)

A great many of these bills receivable that I have spoken of had been carried for a year or more by renewals at the time the bank closed; I think at least half of it; about that same half had been in the bank for two years prior to the time the bank closed; and in one form or another, I would say that from seventy-five to one hundred thousand dollars had been carried in the bank since 1915. (Testimony 38.) [95]

Some of that seventy-five to one hundred thousand dollars had received payments in real money; but a great many of them had not, but had been renewed with the interest added. (Testimony 38.)

Of that one hundred and sixty thousand or thereabouts that had been in for two years or more in the bank, upon which any payments had been made in real money, there was one item of about \$60,000.00 to one corporation and its officers and personally, one way and another employees that had some payments on it from time to time along in cash. While I have never tried to analyze that account, or had an opportunity to study it, and be able to say how much was paid in cash, I will say that a considerable amount of it was paid by other securities, perhaps some of which were a loss, and some of which have been and are still being realized on. That indebtedness was cut down to less than \$25,-

(Testimony of T. H. Adams.)

000.00 so far as to the corporation making it and its officers are concerned before the bank closed; but as to the direct outcome or outgrowth of that there were several other securities, at least some of them, which are still in the bank; they are doubtful as to what will be realized upon them. I believe there are none that I think of that I consider hopeless. (Testimony 39.)

Could pass on them if I had them before me, in the bank on which no payment in real money had been paid for two years prior to the closing of the bank, I would say that there were as much as \$75,000.00. (Testimony 39.)

Referring to Bank Examiner's report of November 20, 1920, Plaintiffs' Exhibit 10 and to the list of bills receivable aggregating some \$114,000.00 set forth therein by the [96] Bank Examiner, a number of these were eliminated by the bank before it failed; the indebtedness of Fritz Kruse is one I have just come to; of Robert Bowman I have no knowledge and perhaps that; and M. E. Cue is largely eliminated, there is not so much indebtedness as that. I cannot quite remember but it seems that we have but little of that paper. I do not remember and cannot say positively that we do not have the Fritz Kruse note. We have the indebtedness of the Peters Garage, \$7,500.00 has been liquidated in full, compromised at about sixty to sixty-five cents on the dollar. But very little has been paid on the Secor Brothers, which is uncollectable. The Frank Sheppard item has been

(Testimony of T. H. Adams.)

liquidated or compromised. A considerable amount of Frank Sheppard paper had been sold to customers; and I believe we settled with Sheppard at twenty cents on the dollar; from twenty to thirty-three and one-third. Many of these settlements I cannot be absolutely sure of. We have realized on the claim of the Hub Printing Company, \$2,000.00 or a little more; the A. E. Johnson indebtedness is a part of the Cowlitz Bridge Company indebtedness; the entire indebtedness has been combined and on this they are paying five hundred dollars a month and one payment and a part of another payment has been applied on the A. E. Johnson note, about \$660.00. The J. H. Gallagher note is another of the Cowlitz Bridge Company, which is combined and on which is being paid \$500.00 a month. The Lulu B. Wells note has had some payments through sale of mortgaged property and only two or three hundred dollars. The indebtedness of Corvallis Sand and Gravel Company is another item of the Cowlitz Bridge Company business, which I mentioned; my [97] agreement with the managers contemplated the payment of one item of \$2,000.00 first, which has been paid, then the note of \$4,000.00 to be second; on that there is a payment and a part, about \$660.00. When that note is paid out, the note of J. H. Gallagher and Corvallis Sand and Gravel Company will alternate and receive the five hundred dollars alternate months as credits. Those are about the

(Testimony of T. H. Adams.)

amounts that we have realized on this \$114,000.00 of bills receivable. (Testimony 40, 41, 42.)

During the year that I have been in control of the assets of the Kelso State Bank, Mr. A. L. Miller has been my attorney and I have advised with him from time to time. He has never had anything to do with salvage at all, I believe. Other attorneys have been making these collections. (Testimony 42.)

In my answer, I have alleged and believe it to be true, that F. L. Stewart, Cashier of Kelso State Bank, was guilty of criminal misconduct of the affairs of the bank. I do not believe I would want to undertake to say how much of the amount of money that was unlawfully abstrated by Mr. Stewart from the assets of the bank would be criminal and how much would not be. I do not think I would be competent to pass on that, but some \$60,000.00 has been taken from the bank in one manner or another by the sale to the bank of doubtful or worthless paper, or on his own note, or on some sort of paper or security that could be carried as an asset, which I think I would be safe in saying have no value as far as that amount of money is concerned. If I may explain my meaning, take a note of \$8,000.00 on which Mr. Stewart benefited \$1,000.00; there will be more than \$1,000.00 [98] loss on that. And if I may put that construction on it, the entire fifty-five or sixty thousand dollars is lost to the bank. (Testimony 43.)

The capital of the bank was \$25,000.00 and its

(Testimony of T. H. Adams.)

surplus was claimed to be \$25,000.00; and in my opinion Mr. Stewart abstracted from the bank a larger sum of money in assets than its entire capital stock and surplus. (Testimony 43, 44.)

In regard to Mr. Stewart's own indebtedness to the bank, Mr. Stewart had a note of \$6,000.00 in the bank which seemed to have been authorized by the Board of Directors, which he had placed in the bank in lieu of one that had been criticized; and in addition to that, Mr. Stewart had an account which he terms "Kelso Farm Company," which was merely a trade name for his farm, which owed the bank \$5,950.00; and then there was an overdraft of between thirty-two and thirty-three hundred dollars. (Testimony 44.)

Mr. Stewart had placed with the bank a guaranty in the sum of \$50,000.00. I have that instrument of guaranty here; it is dated May 26th, 1919, and that is Mr. Stewart's signature on it. (Testimony 44, 45.)

Copy of guaranty offered in evidence and marked Plaintiffs' Exhibit 17. (Testimony 45.)

Letter from Deputy Bank Commissioner Minchell, of date December 13, 1920, to Kelso State Bank, which was offered in evidence and marked Plaintiffs' Exhibit 18. (Testimony 45, 46.)

Being recalled the witness further testified: (Testimony 169.)

Q. Mr. Adams, you heard the testimony of Mr. Minchell yesterday, did you not, with reference to that Cue note, that the Cue note would be taken

(Testimony of T. H. Adams.)

out of the bank [99] and the note of the concern in which Cue was interested would be substituted, and that note be carried for a while, then the Cue note would be back again and the note of the concern would be eliminated. State whether or not there were other instances of that kind occurring in the bank?

To which the witness replied that he did not hear Mr. Minchell's testimony.

Q. Well, my previous question stated the purport of his testimony that I wanted to direct your attention to. Now, were there other cases of that kind?

A. Well, I haven't even found that one. The notes of Cue and the notes of the Hub Printing Company varied something, but I do not believe that I have found a time when the Hub Printing Company did not owe something after it began to borrow and I don't believe I found a time when Cue did not owe something. Both of their accounts perhaps were up and down. (Testimony 169, 170.)

* * * * *

Q. The general point I am trying to get at is whether there were not a number of such cases where, instead of real money being paid on account, it was kept apparently as a live obligation by changing the name of the borrower.

A. Well, I don't know what the object was, but the name of the borrower in the matter of Wallace and Moser and of Triumph Machinery Company

(Testimony of T. H. Adams.)

shifted about, but it was always considered by the Department, I notice, as one obligation. They were criticized, perhaps not always, and the bank had been criticized for carrying it as an excess."

(Testimony 170.) [100]

Further testifying the witness said: The abstraction of assets from the bank by Stewart ran as far back as 1913, and probably before that. It was a sort of a case of robbing Peter to pay Paul. The first abstraction that we have discovered was a case wherein Mr. Stewart put some note in the bank, apparently his own, and credited an estate of which he was administrator. We were not able to determine why he credited the estate, but we assume that he had used the money of the estate and was replacing it. He probably replaced that note with something else at a later date. That was quite frequently done, that some of the paper that he was directly or indirectly responsible for would be paid by the substitution of something else which he was still responsible for in some form or other; and that condition obtained for a long time. (Testimony 170, 171.)

The great bulk of this took place prior to January 27th, 1921. I cannot remember whether I have found anything that he abstracted after January 27th, and before March 17th, 1921. (Testimony 171.)

On March 15, 1921, the deposits in Kelso State Bank were \$5,272.58; the checks were \$16,083.08.

(Testimony of T. H. Adams.)

On March 16, 1921, the deposits were \$7,828.61; and the checks were \$12,373.21. (Testimony 173.)

On cross-examination in response to interrogatories propounded by Mr. MILLER, the witness testified: (Testimony 173.)

The paper just handed me is a take-off or a transcript from the general ledger of the bank of the checks and deposits and of the balances from January 27th, 1921, to the day of closing; it was made from the general ledger of the Kelso [101] State Bank. The first column represents the checks paid on different dates set opposite; the second column represents the deposits on the same dates, subject to check; the third column represents the balances in each account for the respective dates, covering the period of from January 27th to March 17, 1921. The first column is checks, the second column deposits, and the third column is balance at close of business; the balance represents the total amount of that character of deposits in the bank at the close of business still remaining in the bank. There were other classes of deposits at that time, the saving deposits were kept separate; there were time certificates of deposits and demand certificate of deposits, together with Cashiers' checks and various things representing deposits of a minor nature. (Testimony 173, 174.)

There were eight hundred to one thousand general depositors in the Kelso State Bank, including the County Treasurer. There were three or four or five hundred depositors of saving bank

(Testimony of T. H. Adams.)

accounts. On March 14, 1921, savings are debited \$15.98, credited \$373.05 with balance of \$59040.57. On March 15, 1921, savings accounts were debited \$125.49, leaving a balance of \$58,915.08. On March 16, 1921, savings account were debited \$105.80, and credited \$6.91, leaving a balance of \$58,816.19. On March 17th, 1921, there were no changes. The total corrected balance in savings account at the time the bank was closed was \$59,667.61. (Testimony 175, 176.)

The total deposits on general checking account on the day the bank closed was \$254,665.58. There were \$32,605.00 in time certificates; in demand certificates \$6,549.49. [102] Woodland State Bank \$29.39. Unclaimed balances \$34.70, Cashiers' checks outstanding \$9,411.79; collection account \$46.80. That represents all the deposits unless you would call borrowed money or re-discounts deposits. There was an escrow account, which is a sort of unfinished business account, of \$3,713.03. (Testimony 175, 176, 177.)

On March 14, 1921, there was a demand certificate of deposit of \$200.00 paid. On the same day there was a time certificate of \$100.00 paid; and a time certificate of \$200.00 issued. Those are the only changes in the certificates for March 14, 15 or 16. Document showing copy of books and general deposits offered in evidence and marked Defendants' Exhibit "C." (Testimony 177.)

Other than in a letter from Grinstend & Laube saying that plaintiffs' deposit was a preference

(Testimony of T. H. Adams.)

and telling me what the law was, neither plaintiff or any other depositors who deposited funds in the Kelso State Bank on March 14, 15, 16 or 17, have made claims for preference because of deposits made on those days. At no time has there been any claim filed with me by these people for preference. (Testimony 178.)

Witness excused. [103]

Testimony of H. S. Bennett, for Plaintiffs.

H. S. BENNETT, a witness on behalf of plaintiff, being first duly sworn, testified on direct examination, in response to interrogatories by Mr. McCAMANT:

I am connected with the Banking Department of the State of Washington, in the Capacity of Bank Examiner; and have been such since March, 1920. As a part of my official duties I made an examination of the Kelso State Bank in November, 1920, which occupied about three days. I probed into the records of the bank as thoroughly as I knew how and prepared a report based upon that investigation, and Plaintiff's Exhibit 10 is a copy of the summary of that report. The report correctly represented the condition of the bank as far as I was able to ascertain at the time I made my examination; and its condition, as outlined in that report was called to the attention of Mr. Stewart and one other director. I think his name was Wallace. I called for a meeting of the board, and Mr. Stewart and one other director appeared

(Testimony of H. S. Bennett.)

at the meeting and I laid before them the purport of that report. (Testimony 47, 48.)

On cross-examination, in response to interrogatories propounded by Mr. MILLER, the witness further testified. (Testimony 48.)

I do not offhand remember the name of the other director who was present at that meeting; and exhibit No. 10 will show his name. The witness examined the report and said: "The other director present was Mr. James Wallace." This was the only time I made an examination of the Kelso State Bank; the other examinations were made by other officers of the Banking Department of Washington. (Testimony 49.)

I do not know whether the claims mentioned in that report were collected by the bank before it failed or whether [104] any of them have been collected since. At the time of the examination, Mr. Stewart and the other officers of the bank felt that the bank was perfectly sound at that time; there was nothing about it which caused me to close its doors; they were allowed to run after that examination, and they seemed to all feel that it would pull through all right. I had no opinion about it. (Testimony 50, 49.)

On redirect examination, in response to interrogatories by Mr. McCAMANT, the witness further testified:

I sent for Mr. Hay and Mr. Minchell to come down and see what there was there. That is done in cases where we are unable to obtain infor-

(Testimony of H. S. Bennett.)

mation that is satisfactory to us. This examination was a very difficult and hard examination to make. The information on the loans was very general, and might be applied to almost any kind of a loan it seems to me. (Testimony 50.)

Mr. Minchell came down and assisted me in the examination. I do not know where Mr. Hay was at that time. He was not in Olympia when I called for him. (Testimony 51.)

On recross-examination, the witness further testified:

When Mr. Minchell got down there, he arrived about one o'clock in the afternoon and we stayed about three or four hours going over the examination; during that examination we picked out notes that seemed to be slow, doubtful or undesirable assets. As far as Mr. Minchell and myself could tell, the directors seemed to feel that the thing was going to pull out all right. (Testimony 51.)

(Witness excused.) [105]

Testimony of Claude P. Hay, for Plaintiffs.

CLAUDE P. HAY, a witness on behalf of plaintiff, being first duly sworn, testified on direct examination, in response to interrogatories propounded by Mr. McCAMANT: (Testimony 52.)

At the end of 1920 and the beginning of 1921, I was Bank Commissioner of the State of Washington. I ceased to be Bank Commissioner on March 31, 1921, as the result of legislation. After

(Testimony of Claude P. Hay.)

I ceased to be Banking Commissioner I was appointed Deputy Supervisor of Banks of the Banking Department of the State of Washington; the office of Commissioner was abolished by the legislature, and the new office of Supervisor of Banking was created. (Testimony 52.)

Prior to the time I became Bank Commissioner I was connected with the Department as an examiner. My first service with the Banking Department of the State of Washington began in 1908, and I was connected with the Department off and on from that time on until the time I was promoted to take charge as the head of the Department. I was out a year once or twice liquidating banks. Plaintiff's Exhibit 9 is a letter based on examination made by me of this bank in 1919. At that time, I found the condition, in a general way, the most unsatisfactory in the matter of the character of their assets; that is, the loans and discounts were such that I questioned very much the value of a great many of the items which I found there; as a whole they were nonliquid, very slow of collection. (Testimony 52, 53.)

As Bank Commissioner, I received a report made by Mr. Bennett in November 1920, of an examination made by him in that month. I personally examined the bank at least three times, possibly more or participated in examining it. I cannot recall being consulted [106] about Plaintiff's Exhibit 18. I know that when the examination was made, I directed that the proper letter be

(Testimony of Claude P. Hay.)

written. It is possible that I did not have anything to do with it; I cannot say at this time. I remember the circumstances of a conference at Olympia in my office, when a visit was made to my office by Mr. Lou Plamonden, at which time I am not certain whether his brother was with him or not. As I recall it, there were two conferences. At the first, I do not think George Plamonden was present; but at the second one, I am positive that George Plamonden was there, and I am inclined to think that Lou Plamonden was there also. I know that George Plamonden resigned or intended to resign or had handed in his resignation and at my request it did not become effective, and he agreed to stay with the Kelso State Bank for a short time. I am inclined to think that it was at the time of the first interview in Olympia that I was advised of Mr. George Plamonden's contemplating resignation. He was assistant cashier. I cannot say that he gave me any reason himself. I am not clear just how I first became aware of the fact that he was going to resign, whether he told me or whether I got it through his brother or whether I saw the written resignation. At a later date, however, his brother did make some remark about why it was desirable for Mr. George Plamonden to leave the bank. If he made the statement at the time I think he made it, then George Plamonden was present, and they were both present at the same meeting. The statement at that time that the way things were going on there he did not want George to

(Testimony of Claude P. Hay.)

remain in the bank, he would not have any brother of his working there, or something of a remark like that. (Testimony 55, 56.) [107]

As I recall, the visit of Mr. Lou Plamonden to me the first time was for the purpose of obtaining or discussing the purpose of obtaining a third charter for a bank in Kelso. There was a conference held about March 6, 1921, at Chehalis concerning the Kelso State Bank. I was very much dissatisfied with the way things appeared to be going there, and I determined to get in touch with the directors of that bank through some other medium than Mr. F. L. Stewart, the Cashier. I felt that Mr. Stewart had not carried out my instructions in putting before the board instructions that had been given, certain information that I wanted the board to have, and consequently I made arrangements to have certain members brought to meet me in Chehalis without the knowledge of Mr. Stewart. The reason for holding the meeting in Chehalis was simply because I did not care to appear in Kelso for the reason it might cause some comment and have a bad effect on the bank as it sometimes does in small towns. The Chehalis meeting was held March 6, at the St. Helens Hotel, at which were present Mr. Carothers, President of the Bank, Mr. Plamonden, Assistant Cashier of the Bank, and Mr. George Marsh, a director of the Bank. There was also present at that conference besides myself, Mr. Minchell, Deputy Commissioner. At that meeting, I called the matter to

(Testimony of Claude P. Hay.)

their attention rather forcibly, the fact that the condition of the bank was such that I was very much concerned, and that I wanted them to know directly from me that something had to be done and done quickly, and that that something was a matter of raising sufficient money to take out the objectionable assets. I could only go so far as levying an assessment, and I agreed with them that an assessment would be levied immediately upon [108] my return to Olympia, which was done, on March 7, a one hundred per cent assessment was levied, which was the limit the Bank Department could levy at that time. (Test'y 57, 58.) I do not recall just exactly what transpired in regard to what could be done about Stewart. It was generally understood that I wanted Stewart removed from that bank and always had felt that he should be removed, and I afterwards demanded his resignation, I think on the following day or on the same night. I remember also at that interview in regard to the condition of the bank, that Mr. Marsh entered into quite a lengthy story in regard to his connection with the bank, and how he acquired his stock; but I do not remember now just exactly what he did say. I would not say that he said anything about having recently acquired knowledge of the condition of the bank. I know that he had some time prior to that suddenly discovered that the bank was not in the excellent condition which he had always supposed that it was; but just when he had discovered that, I do not recall that he stated. (Test'y 58, 59.)

(Testimony of Claude P. Hay.)

I think Mr. Minchell wrote the letter to Mr. Carothers dated March 7, 1921. I know that the matter was discussed at that conference and I had made up my mind to levy an assessment on the following day, March 7, and when that formal notice of assessment was mailed, I believe a letter was written Mr. Carothers for the purpose of putting the Department on record in writing, as we had no evidence except statements Mr. Minchell and I might make. (Testimony 59.)

After the conference in Chehalis I called Mr. Stewart on the telephone and arranged to have him meet me at Olympia night, Sunday night March 6, and he came to Olympia. At that time I gave him to understand that he had to eliminate himself [109] from the Kelso State Bank. I wanted to have it done without any publicity but it was understood between him and I that he was to leave the institution. I also told him at that time that an assessment was to be levied the following day. The assessment was levied on the following day, and ten days I think were given for the collection of the assessment. I think that the next thing that came up was a visit from Mr. Plamonden, possibly both George and Lou, and I think a gentleman named Adams was also present, who had during all this time been attempting to reorganize the new bank to take over the Kelso State Bank. I think they had not met with success principally in raising the capital, and I think possibly their investigation of the assets had caused them to slow up, or at least lose

(Testimony of Claude P. Hay.)

a little of their enthusiasm in regard to taking over the bank. There was some conversation then, but I am not clear what that was about. As a matter of fact, it may be that the appraisal of those assets was not made until after that interview. I received a letter from one of the Plamonden's which gave an appraisal of the assets which was anything but satisfactory, either to the purchaser of the bank or to the banking department from its standpoint. The gentleman by the name of Adams I mentioned, I think is in the hardware business in Kelso, located directly opposite the bank. He is not the Mr. Adams who was on the witness stand in this case this afternoon. (Testimony 59, 60, 61.)

I think the same time that this letter was received, I also received a letter from Mr. George Plamonden asking me to come to Kelso if possible that night, giving me train schedules and so forth, because of the fact that they had been [110] unable to collect this assessment which I had levied, and the time was drawing near for a show-down, you might say. I immediately went to Kelso, the night of the 16th; and I believe I arrived in Kelso somewhere about eight o'clock in the evening. (Testimony 61.)

When I arrived in Kelso, I met Mr. Plamonden and Mr. Stewart. I don't recall whether Mr. Carothers was there or not. He may have been. We went over the affairs of the Bank, merely the assets, the note part, you might say, and it did not take me very long to determine that some mighty fast work had got to be done. Before the night was

(Testimony of Claude P. Hay.)

over, I had told them that unless they were able to collect the twenty-five thousand dollars before the opening hour the next morning, I would tack a sign on the door, because I felt that the bank was in no shape to continue to receive deposits. That was my opinion then and it is still my opinion. I do not think they had anything to propose in the way of a solution of the problem. One of their stockholders was a man reputed to be worth a great deal of money, and I believe he was heavily interested in the community, he was the President of the other bank there as I recall it and he was in Portland; and I felt that possibly his interest in the general situation might make him the key to the whole thing, that he might possibly be able to assist the bank in some way to prevent a failure, which was the thing we were trying to get away from if there was any way. We worked on it until I suppose one or two o'clock in the morning, and then retired, and I believe I got up about four or five o'clock in the morning to catch an early train to Portland, accompanied by Mr. Stewart. We interviewed this Gentleman, [111] who was Mr. E. S. Collins; and we found from that interview that there was no help coming from that source, so I returned to Kelso. I first had Mr. Collins get in touch with his Cashier at the First National at Kelso and with the Banker at Castle Rock, Mr. Buland, and arranged to have them meet me, when I was in Kelso, to determine whether or not there was anything they could do to help the situation, and also in order

(Testimony of Claude P. Hay.)

to let them know what might possibly happen if we could not get at the last minute something that would save the thing. When I arrived there, I found we had gone our limit. I went over and put the sign on the door, I presume about twelve-thirty or one o'clock, on March 17, 1921. (Testimony 62, 63.)

The last time I saw Mr. Stewart, I left him on the street, shortly after leaving Mr. Collin's office; I do not recall what street it was. I was on my way to the depot, and I am not familiar with the streets in Portland, it was one of the streets down from the Imperial Hotel, I think at the corner of Broadway and something, I left him there, and he felt very confident that he was going to raise the money through some bankers. To my knowledge, he never returned to Kelso. I returned to Kelso on Wednesday and I stayed there until Saturday, when I went back to Olympia for over Sunday and returned to Kelso the next day; I was in charge of the bank from then on until Mr. Adams took charge of the liquidation some time in April, I do not recall the exact date. During all of that time Mr. Stewart never returned to Kelso. He came with me to Portland for the purpose of getting financial assistance for the bank and that was the last I saw of him. I had a talk with him over the long [112] distance telephone after I separated with him here in Portland. He called me up about three o'clock on the 7th, and asked me about how things were up there, or something of that sort;

(Testimony of Claude P. Hay.)

I told him that I had closed the bank and he said, "Well, that is too bad, because I have got the money." I said, "All right, come on up with me if you have got the money with you and perhaps work this thing out," and he told me he would be up on the evening train, but I never saw him again. (Testimony 64, 65.)

Mr. Duke became the head of the Department on April 1, 1921, I remained as regular deputy in the department, but continued to handle the work at Kelso State Bank until such time as I was able to find someone we could put in charge. (Testimony 65.)

At this meeting in Chehalis, on March 6, 1921, I do not recall now just what I told the directors at that time except that they had to have twenty-five thousand dollars more in capital in there to make up the losses; that is, that it would take the maximum assessment which I could make to satisfy me at that time. I don't know what I would want to say that twenty-five thousand dollars would make the bank safe; but that was the maximum I could levy, and that was the best I could do in the interest of the stockholders. (Testimony 65.)

The second conversation at Olympia at which George Plamonden, Lou Plamonden and Mr. Adams were present occurred after the 7th, after the assessment was levied, and before we closed the bank; I could not say whether it was before or after the 12th; it was very close to the 12th. (Testimony 66.) [113]

(Testimony of Claude P. Hay.)

On cross-examination, in response to interrogatories propounded by Mr. MILLER, the witness testified:

I have known about the Kelso State Bank and its management in a general way almost ever since I was in the department, in 1908 or early part of 1909. I left the Department in 1909 and returned to it in 1911 or 1912, and it may have been that it was not until 1912. (Testimony 66.)

I do not think I made an examination of that bank prior to 1914; from 1914 on down to the time the bank was closed I made several examinations. The law required us to make an examination at least once a year, and we complied with the law. How much oftener than that, I cannot say, perhaps some ten or eleven months apart. In making those examinations, I made one or two examinations alone, and there was one examination I made with another Examiner, Mr. Motherwell. There are three examinations that I am positive of. (Testimony 66, 67.)

I was head of the banking department of the State of Washington from March, 1920, to March 31, 1921; and during that time, if I did not make the examinations, I received reports from those who did make the examination. (Testimony 67.)

Some of these slow notes in the Kelso Bank were there for several years. I would not want to say that I would discover all those old notes or renewals of the same notes at my examinations; but some of them had been in there for several years;

(Testimony of Claude P. Hay.)

possibly not continuously but they went out and came back again. I do not mean that they were changed by renewals, what I mean is this: A note was criticized and it would disappear from the assets. Presumably it was paid. Later on it would appear again in the assets, and apparently [114] Mr. Stewart arranged to have it carried outside of the Bank and then later on it would be back in the bank again. I did not notice that at first when making these examinations; that only came out as more examinations were made. During the year 1920, I think practically all of the notes I finally criticized were in the bank, and had been even before that time. There had never been a run on the bank to my knowledge. Conditions at the time I ordered the assessment were practically the same or very similar to what they had been for a year, a year and a half or two or three years prior, so far as the financial condition of the bank was concerned. I do not recall that the question as to the amount of cash reserve ever entered into my criticism of the bank; it was the character of the assets I objected to primarily, that and the management. I was not satisfied with the management. The thing that I was complaining about was that the bank ought to get rid of this paper which was bad and it had been carrying for a long time; and what led me to make an assessment on the stockholders was that I had determined to eliminate certain assets, once and for all. My purpose in ordering this assessment was not because I contemplated

(Testimony of Claude P. Hay.)

that the bank was going into immediate insolvency or anything of that kind, but it was to enable me to get rid of some bad paper in the bank. I did not have any contemplation at that time the closing of the bank. I had not contemplated closing the bank at any time. (Testimony 69, 70.)

I did not discover that the stockholders could not pay the assessment until I was called to Kelso by the letter from Mr. Plamonden, dated March 14th, asking me to come down there, because they needed me, or they were having trouble [115] about something. I do not recall the letter of March 14, this letter that you have just handed me. I heard it discussed recently, but what I mean is I don't remember what I did at that time or anything about it. As a matter of fact, I rather think that it came in after I had taken some other action. After examining this letter, I will say I undoubtedly saw it, but I do not recall it. (Testimony 70.)

Letter referred to by the witness was offered in evidence and marked Defendant's Exhibit "A." This letter, Defendant's Exhibit "A," is a letter from Lou Plamendon, who was operating a bank at Woodland; and in it they ask for five days more time in which to collect the assessment. I made the levy for the assessment on March 7th and gave them ten days time, which would be up on March 17th. I do not recall that the contents of this letter entered into the matter at all. Evidently I did not give it enough consideration at that time so that I even remember about receiving the letter. (Testimony 71, 72.)

(Testimony of Claude P. Hay.)

I think I went down to Kelso on the 16th in response to a letter from Geo. Plamonden, which letter I think was dated March 14th. When I got there I found that they were not able to raise the assessment that I had levied; I know that Mr. Stewart was not able to raise his, but I do not know how far they were successful toward collecting others. I did not conclude that the bank ought to be closed until after I talked with Mr. Collins, who was one of the stockholders. After seeing him and talking with him, I was satisfied that that was my only course. Up until that time, with all that I knew about the bank, I did not feel that there was sufficient justification to close it; and none of the [116] officers felt that way; they all believed that it would work out. Until the very last, I think they were confident that it would work out. (Testimony 73.)

I do not remember that I ordered any deposits made on March 17th, returned; at least \$134.00 was not returned; but the balance of it was. (Testimony 73.)

When I left Mr. Stewart in Portland, he said he was going out to raise the money and he thought he could. (Testimony 73, 74.)

I was satisfied for a long time before that it was not for the best interests of the bank to longer keep Stewart in there as Cashier and General Manager. That was only one of the things that the meeting was held for. There were two objects for holding the meeting, one was to levy an assess-

(Testimony of Claude P. Hay.)

ment to get rid of some bad paper; and the other was to get rid of Stewart. I would not say there were any other reasons. If there were, they were minor reasons. (Testimony 74.)

The closing of the bank was not contemplated until the last day. My meeting with Mr. Geo. Plamonden, Assistant Cashier Kelso State Bank, and his brother Lou Plamonden, was between the 7th of March and the 14th; although I am not clear in regard to the date of that meeting. Lou Plamonden said that he did not want George Plamonden to stay there any longer in the bank; I think it was Stewart's presence there that they were particularly objecting to, and Lou did not want his brother to be longer tied up with Stewart. The condition of the bank had considerable to do with it also at the time of that conversation. As far as I know, Lou Plamonden had never gone over the bank papers at [117] that time. (Testimony 75.)

My recollection of it is that it was about March 1st, when George Plamonden either tendered his resignation or said he was going to hand it in. As a matter of fact, he continued as Assistant Cashier up until the bank was closed at my request. As far as I know, he never presented his resignation to the Board of Directors. I cannot say whether he presented it or not. That may have been what he did in the first place, and I was advised of it. I wanted to have some one to check Stewart, and I felt I could rely on Mr. Plamonden at that time. I did not like Mr. Stewart's methods, and I

(Testimony of Claude P. Hay.)

did not trust him, and while I had nothing on him, I knew there was something wrong somewhere. The only thing I knew about it was that there was a lot of these notes that we contended were bad and which he said were good; and some were bad and they had been in the bank a long time. I wondered at the time whether what they had in mind was that George and his brother were thinking of taking this bank over and getting rid of Stewart, and that George stayed in the bank with the idea that they would acquire the bank and get title to the bank and get rid of Stewart. It went so far as to have Lou Plamonden of the Woodland Bank, go over the papers to see if he wanted to go into the reorganization of the bank, or purchase the bank. (Testimony 76, 77.)

I possibly should explain Lou Plamonden's connection with the examination of the assets. I think at that time it was partly that he was called in to help the situation out at Kelso, too, in addition to possibly take over the bank. It was a twofold purpose. He had in mind to get the bank if he could get it, he and his brother; and on the [118] other hand there was a question of assessment having been levied, or Stewart not being able to pay; there was a question of what he might do toward possibly taking over Stewart's stock, or something of that kind, that the examination was made; it was not entirely for the purpose of getting hold of Stewart's interest that this examination was made; it was a question of saving the bank, or prevent

(Testimony of Claude P. Hay.)

the closing of it. Lou Plamonden was not connected with the bank in any manner, either as a stockholder or officer. (Testimony 77, 78.)

On redirect examination, in response to interrogatories propounded by Mr. McCAMANT, the witness testified:

The letter of date March 14, 1921, from Lou Plamonden, was received by me.

The letter identified by the witness was offered in evidence and marked Plaintiff's Exhibit No. 19. (Testimony 78, 79.)

Letter dated March 14, 1921, from L. M. Plamonden to the witness was identified by the witness, and was offered in evidence and marked Plaintiff's Exhibit 20. (Testimony 79.)

I do not recall receiving the enclosures that went with this letter, Plaintiff's Exhibit 20, report of examination of notes and bills receivable. I know there was some sort of an examination sent in with it. There was a list that went with this letter, of the assets and liabilities. (Testimony 79, 80.)

The witness identified letter of March 14, 1921, from Geo. Plamonden, which was offered in evidence and marked Plaintiff's Exhibit 21. (Testimony 80.) [119]

I do not think there is any question about my writing this letter which you have shown me, dated March 15, 1921.

Letter was offered in evidence and marked Plaintiff's Exhibit 22. (Testimony 81.)

(Testimony of Claude P. Hay.)

The witness was then shown letter of date March 15, 1921, signed by the witness, and addressed to F. M. Carothers.

I do not recall writing this letter; it is in the same class as the other; it is evidently a copy of a letter I did write. I think there is no question about it.

The letter identified by the witness was offered in evidence and marked Plaintiff's Exhibit 23.

On redirect examination, in response to interrogatories propounded by Mr. MILLER, the witness further testified:

Q. In the letter of March 15, 1921, addressed to Mr. Carothers, the President, you say in that letter: "I am just in receipt of a letter from Mr. L. M. Plamonden in which he states that it is your desire that this department give you an extension of five days for the purpose of collecting the assessment levied against the stock of your bank. Mr. Plamonden suggested that I telephone you which I agreed to do. However, on second thought I have decided it might be better to advise you by letter, rather than take a chance of there being eavesdroppers who might hear our conversation over the wire. I trust you will be able to complete the collection of your assessment within the additional time allowed." So you did give them five days more? A. Yes, apparently.

Q. And that would not have expired until the 22d of March?

(Testimony of Claude P. Hay.)

A. Twenty-second of March. (Testimony 81, 82.) [120]

Being recalled, the witness testified further as follows: (Testimony 163.)

From my examination of the affairs of the Kelso State Bank made during the month that I was in Kelso from and after March 16, 1921, at which time I spent that whole entire month familiarizing myself with its affairs, I found that the bank was in a hopeless condition. If I had known those facts in January, 1921, as I found them to be in March and April, 1921, I would have then done the same thing that I later did in March; after giving a reasonable amount of time, I would have closed the bank. In testifying, as I did before to the effect that I thought the officers of the bank expected the bank was going to pull through when I came there in March, I think that testimony had to do with my opinion as of date that I closed the bank, on the night of March 16, 1921, when we had the conference. So far as I was concerned, Mr. Stewart had ceased to exist after I demanded his resignation. In testifying as I did, I did not include Mr. Stewart and did not have him in mind. I should think that Mr. Stewart was thoroughly conversant and knew the conditions of that bank, and knew the facts. (Testimony 163, 164.)

On cross-examination, the witness further testified:

I presume Mr. Stewart did think up until the time that I took charge of the bank, that the direct-

(Testimony of Claude P. Hay.)

ors of the bank possibly did believe that they could save the institution. I do not know that I would want to say that I had every reason to think that Mr. Stewart thought so. While Mr. Stewart made the statement that he thought he could get money to go on, or something of that kind. I did not have much confidence in his statement, nor in his getting the money. To my knowledge, there had been no run on the bank, and I would not say that [121] there was any material change in its condition. I expected, or at least I thought, there was a reasonable chance of saving the institution. If I had not thought that, I would have closed it down then. I simply gave them the amount of time I thought they were entitled to. I did not have all of the information in January that I had in March. For instance, March 14th, I had received this independent appraisal of Mr. Plamonden who had been figuring on the reorganization of the bank. It is true that I had been examining the same securities off and on for five or six years; but I had never been able to get the board of directors together, so I did not go and talk to them personally about it. The Plamonden report was not the same report that I had been receiving for years back; there was information supplemental to the report. I rather believed that this one hundred per cent assessment which I levied on March 6th, would be sufficient in amount to keep the bank going; but when I found they were unable to meet that assessment, I then concluded to close the bank. It is true that the

(Testimony of Claude P. Hay.)

time they were given to meet that assessment had not yet expired, but they had, in my belief, come to the conclusion that they were not going to be able to collect more than half of it; and I then thought the bank ought to be closed. I would not say that I thought the condition of the bank was hopeless before I closed it. If I had thought it was hopeless prior to that time, I would have closed it sooner. The vital part of the information upon which I acted was not received until March 14 or 15th; I presume it was the 15th when I first saw it. Mr. Plamonden went in there as a prospective purchaser. I had been there as Bank Examiner a number of times before looking over the securities. (Testimony 167, 168.)

(Witness excused.) [122]

Testimony of J. C. Minchull, for Plaintiff.

J. C. MINCHULL, a witness on behalf of plaintiff, being first duly sworn, testified:

On direct examination, in response to interrogatories propounded by Mr. McCAMANT, the witness testified:

I am deputy supervisor of banking, State of Washington; I have been connected with the Banking Department of the State of Washington since November, 1919; however, not in my present position all of the time. I was called to Kelso by Mr. H. S. Bennett in November, 1920, to assist in an examination of the Kelso State Bank. Upon my arrival, I immediately went into conference with

(Testimony of J. C. Minchull.)

Mr. Bennett and Mr. Knapp, the Examiners, and also Mr. Stewart, the Cashier of the Bank. I called Mr. Stewart's attention to the more important phases of the situation at that time. My criticism was particularly directed to certain loans that were disclosed by the report of the examination. The question in my mind was as to the real value of those loans as assets. In the light of information we had received they were indeterminable; we could not determine really what their value was. My insistence in talking with Mr. Stewart was that unless he could disclose to us that these were proper assets for the bank to carry, that we were going to insist upon their being eliminated. When he would make statements to me about the assets being all right, I felt that his contention regarding the assets might be genuine in his own mind; but I could not feel that his value of the assets was correct; and I recall quite distinctly telling him that I believed he was kidding himself as to the value of those loans as assets. (Testimony 83, 84.)

I was present at the interview at Chehalis on Sunday [123] March 6, 1921. Mr. Marsh, one of the directors of the Kelso State Bank was present. After that conference Mr. Hay stated to the gentlemen present that in his opinion it was necessary that an assessment of one hundred per cent be levied to take care of the probable losses; and I recall that Mr. Marsh's remark was to the effect that it would take all of that, or to the effect that there would not be enough; words to that effect. I cannot recall his

(Testimony of J. C. Minchull.)

exact words. His statements were to the effect that he was willing to pay his one hundred per cent and that the stock owed him nothing; that is, that he could then turn in his stock and still be money ahead with regard to his purchase of the stock. I do not know that he made any definite statement in regard to what he was going to do after he paid the assessment with reference to the stock. My recollection is that his remarks carried the inference that he would turn in his stock, that he was willing to pay the one hundred per cent. (Testimony 85.)

I do not remember that he said exactly that he was going to give away his stock after he had done that, but that was the impression I received, however, from his conversation. (Testimony 85, 86.)

When I was present at the bank, I found Mr. Stewart and Mr. Plamonden in control. We did business with them. Our conversation was with them, and also with Mr. Wallace, one of the directors. Mr. Stewart, however, was the person to whom all our remarks and criticisms were directed; we looked to him as being in control; he was the executive head of the bank. As far as I know, Mr. Plamonden was there every day. I was not acquainted with the force in the bank at that time. [124] I met them in the directors' room and paid no attention to the force at that time. I could name them from the record, but I do not know of my own personal knowledge just who was there except Mr. Stewart and Mr. Plamonden. (Testimony 85, 86.)

(Testimony of J. C. Minchull.)

The letter introduced in evidence under date December 13, 1920, was written by myself; and that letter was based on the information contained in the report of the examination, and also the information obtained at this conference following the examination; and further I took into consideration at that time information contained in the four reports of examinations made by previous examiners. My recollection is that I used a sheet of paper, and using the dates of the reports of the examinations, I showed the total obligations of certain of these borrowers at an examination in 1918, 1919 and this one, and possibly former examinations. (Testimony 86, 87.)

The conclusion I drew from all the information I had available was that the notes constituting assets would be changed and interchanged, sometimes in character and sometimes in amount, so as to give the appearance of the assets of the bank not being the same ones at all, but they were in fact the same. For instance, at one examination, there would be an obligation of M. E. Cue, in a certain amount; at the next examination, that would disappear entirely, and we would find the obligation of the Hub Printing Company, which was a newspaper owned by Mr. Cue. (Testimony 87.)

From my examination, I could not conclude that any real money was being paid on these old bills receivable and they were actually being reduced. I tried to determine that, but I could reach no con-

(Testimony of J. C. Minchull.)

clusion; my inference was that there [125] was any bills being reduced. (Testimony 87, 88.)

I recall at one time a Mr. L. M. Plamonden, the brother of George Plamonden assistant Cashier Kelso State Bank was in my office at Olympia, and my recollection is that he at that time displayed to me a copy of a written resignation which George Plamonden had turned in to Mr. Stewart; I cannot fix the date of that. It was following the conference at Chehalis of March 6, and following the correspondence had on March 7th, but I could not fix the date definitely as to that. (Testimony 88.)

I cannot recall a time at which any conference was held when both L. M. Plamonden and George Plamonden were both present. I had conferences with both of them but whether in the presence of each other I cannot distinctly recall. They were both in the office on the same day in company with Mr. Adams. At my interview with Mr. George Plamonden and Mr. Adams, it was with reference to the raising of capital, and a reorganization of the bank. They had returned from a trip from Bellingham and informed me that they had not been entirely successful in raising the capital they had hoped for. (Testimony 88, 89.)

I recall the letter of March 14, 1921, written by Lou Plamonden transmitting a statement of assets and liabilities of Kelso State Bank. As I recall it, there was a list of notes submitted with this letter. I do not recall anything as liabilities. I think the letter contained a list of part of the assets and an

(Testimony of J. C. Minchull.)

estimate as to what they were worth, which ones were good and which ones were not. I have seen that in our files, and have searched them but have not been able to find it recently, since it has been asked for. (Testimony 89.) [126]

On cross-examination in response to interrogatories by Mr. MILLER, the witness further testified: I cannot fix definitely the date of the conversation with the two Plamondens at Olympia; it is my recollection it was following the meeting at Chehalis. George Plamonden was present at the conference in Chehalis; Lou Plamonden was not there. After that meeting I believe George Plamonden returned to Kelso. Sometime after that they both came to Olympia, but I could not fix the date definitely. They had gone to Bellingham in the meantime. The purpose of that trip was to interest the capital in the reorganization of a new bank at Kelso. In that regard, the talk of taking over the capital of the Kelso Bank developed later. It was my personal conclusion that they wanted to get Stewart out; but I do not think there was anything developed. I did not talk with George Plamonden about his resignation; I talked with Lou Plamonden, who was not connected with this bank in any manner, but my inference that he was trying to get connected with it by buying an interest in it. (Testimony 91, 92.)

Mr. Lou Plamonden had been permitted by Mr. Stewart to go in the bank and make a list of its

(Testimony of J. C. Minchull.)

assets which was the list sent to my office. (Testimony 92.)

Personally I made no examination of the Kelso State Bank. I was called in following the examination of Mr. Knapp and Mr. Bennett on November 19, 1920, and that was the only time I ever examined the assets of the bank. At that time I really made only a partial examination of such assets that I felt were subject to criticism, and I discussed them with Mr. Stewart and tried to impress upon him the fact that I did not believe they were the proper assets. I did not make an [127] examination of the general assets and liabilities of the bank at that time, but only of certain paper I called his attention to, which had been in the bank some time; slow paper. (Testimony 92, 93.)

Mr. Stewart was very insistent that he would be able to collect on these papers, his statements were that always he felt that he could work those papers out. I believe he was sincere in his belief, but I felt that he was deceiving himself. He thought he was a good trader. This meeting in Chehalis was partially for the purpose of getting rid of some of this slow paper; and I remember having discussed with Mr. Carothers and Mr. Marsh and Mr. Plamonden what they thought as to the advisability of getting rid of Mr. Stewart as the managing officer of the bank. We thought that that was one of the bad features of the situation. We felt that Mr. Stewart ought to be superseded by some person competent to properly handle those slow items; but more es-

(Testimony of J. C. Minchull.)

pecially as to the general management of the bank, centered around these assets, the value of which we could not determine. (Testimony 93, 94.)

There was no thought at that time of closing the bank; I do not believe the subject was mentioned at all by anyone; what we wanted to do was to work out a plan to get rid of some of this slow paper, and with it, Mr. Stewart; because we felt it would be to the best interests of the stockholders and depositors to have a change in the management. (Testimony 94, 95.)

Mr. Marsh made some reference to his stock; he said something to the effect that he could pay his one hundred per cent assessment and still the stock would not owe him [128] anything. I believe that is about the expression he used. He may have told me how he got hold of that stock; but I do not recall distinctly what it was; my conclusion was that he got it in such a way that it would not cost him anything, this additional one hundred per cent. (Testimony 95.)

On redirect examination, in response to interrogatories propounded by Mr. McCAMANT, the witness further testified:

Under our law we do not have the option of chartering another bank at Kelso. There are certain requirements which, if met, we were obliged to grant a charter; so we always try to avoid discussing that, if possible. We would like to use

(Testimony of George F. Plamonden.)

our discretion, but in the final analysis we are not allowed to.

(Witness excused.) [129]

Testimony of George F. Plamonden, for Plaintiffs.

GEORGE F. PLAMONDEN, a witness called on behalf of plaintiff, being first duly sworn, on direct examination, in response to interrogatories propounded by Mr. McCAMANT, testified as follows: (Testimony 98.)

I was Assistant Cashier of Kelso State Bank; and had been such assistant cashier for somewhere around six years. On and after the 27th of January, 1921, the active force in charge of the running of the bank from day to day was Mr. F. L. Stewart, Cashier, myself, Mr. George Plamonden, Assistant Cashier, Eldon Dunham, teller and Miss I. Waugh, teller; we also had a stenographer, but I cannot remember her name. She was there a short while. The president of the bank was not there from day to day; the executive head of the bank, the man who took the responsibility was Mr. F. L. Stewart. (Testimony 98, 99.)

Prior to the closing of the bank, and as near as I can recall on or about March 4, in the later afternoon, 1921, I prepared and presented to Mr. Stewart, Mr. McCamant and advised the banking department thereof, my resignation of my office, as Assistant Cashier. (Testimony 99.)

During the month of March, 1921, I recall having one conversation with Mr. Linus Perry Brown,

(Testimony of George F. Plamonden.)

County Treasurer, with reference to making additional deposits of county funds. Mr. Stewart asked me to go to Kalama and ask Mr. Brown about arranging for county funds. Mr. Stewart asked me to make this request of Mr. Brown, that the bank be allowed to receive its quota of county deposits in due course, and that Mr. Stewart would repurchase the warrants from his corresponding banks and then deposit them with him. Mr. Brown very rightfully refused to do that, saying [130] that he could not do so under the law, because there would be an interim during which he would have no security, the interim between the time that the bank would take the warrants back and deliver them to him. For instance, in explaining why I say that the county treasurer rightfully took that position, let me presume that our surety bonds were in the amount, of Seventy Thousand Dollars, that we had on deposit with the County Treasurer, covering his county deposits. Now, he could deposit with us up to that amount under the law. I believe the law is such in Washington that he cannot deposit unless he had securities to cover his deposits. Now, Mr. Stewart's idea was that Mr. Brown deposit with us over and above the amount of our surety bonds, and then Mr. Stewart would take down his warrants; that we would repurchase them under what is called a repurchase agreement; but in the event that Mr. Brown would have consented to do that, there would have been an interim between the time he would make the deposit

(Testimony of George F. Plamonden.)

and the time he would receive his additional securities that he would not be secured on the deposit over and above the amount of his securities. I do not recall that there was any conversation in which Mr. Brown said what he could do, if anything, along that line. I delivered my message and received my answer; as I recall, that was the extent of our conversation. (Testimony 99, 100, 101.)

Following the conference at Chehalis on March 6, 1921, at which conference I was present, after that conference I, my brother, and Mr. Carothers, made an examination of the assets of the Kelso State Bank. I do not know that I could give you the exact date when we completed that examination; but I can give you the approximate date, which I would say was [131] around the 14th or 15th of March. I cannot say the exact date; I really do not remember. I know that we worked almost all of one night on this work of examining the assets. My brother was in conference with me upon this subject; we worked together; Mr. Carothers, Mr. Stewart, my brother and myself made the examination. (Testimony 101, 102.)

Plaintiff's Exhibit 21 is a copy of a letter I wrote under date of March 14, 1921. I believe Plaintiff's Exhibit 20, letter dated March 14, written by my brother, and plaintiff's Exhibit 19, a letter dated March 14, to have been copies of letters written by my brother. After refreshing my memory by reading those letters, I would say that in the event that

(Testimony of George F. Plamonden.)

these dates are correct, that we completed the date of the examination of the assets and liabilities of the Kelso State Bank on the night of March 13th. (Testimony 102.)

That examination which we made showed that in our estimation there was a great deal of objectionable paper among the bills receivable of Kelso State Bank. We figured that there was somewhere around One Hundred Thousand Dollars worth of paper that it was very questionable if collections could be made upon. We figured that there was something a little over One Hundred Thousand Dollars that we figured would be paid, but that was most probably slow. In our estimation we considered it to be good, but we considered it to be slow. (Testimony 102, 103.)

But of the parties who participated in that examination, we did not all agree in these conclusions. Mr. Stewart objected quite strenuously to a great many of our ideas. A large part of the paper that we thought was worthless in our opinion, Mr. Stewart insisted that in his opinion would eventually [132] be paid. It was largely a matter then of a difference of opinion. Mr. Carothers, I think, coincided with my brother and myself in those opinions; he thought there was One Hundred Thousand Dollars of uncollectable paper. (Testimony 103.)

Prior to the month of March, 1921, and during the winter of 1920 and 1921, it was difficult to main-

(Testimony of George F. Plamonden.)

tain the legal reserve in the bank; the bank rediscounted warrants and loans quite extensively for the purpose of maintaining and having sufficient reserve. There was bound to be an increasing difficulty in doing that for this reason, that a bank's credit is just like an individual's credit. I will say that our correspondent banks were mighty fine to us. As time went on, of course, it naturally grew a little more difficult to increase our line of credit. During that winter of 1920 and 1921 it seemed to me that there was not sufficient effort made to collect much money from bills receivable. I have not charged my mind with how much was collected and how much was not. (Testimony 103, 104.)

About a week before the bank closed, I would say, from the 10th to the 12th, around there some place, I had a conversation with Mr. Stewart relative to what he would do in the event of the worst coming to the worst. On this particular day, it seemed to me that Mr. Stewart was looking very badly, and the thought just came to me I would go back to his desk and talk matters over with him a few minutes, and see if I could not cheer him up. I went back to his desk, and we talked for a little while, and I thought he seemed rather blue; and finally I say, frankly, I said, "Fred, in the event it were possible that you could not do your part in [133] this, you would not do anything rash, now, would you?" As I remember that was just about the exact words I used, and Fred laughingly told me that I need not worry about him, that everything was going to come

(Testimony of George F. Plamonden.)

out all right, and that in another year, we could look back and smile at our troubles, but that in no event would he be silly enough to do anything rash, make away with himself, or anything of that sort. (Testimony 104, 105.)

I am telling you the conversation, Mr. McCamant, as I remember it at the moment. I did not charge my mind with it especially at the time. That is as near as I can remember it. As I tell you, I cannot remember the exact words, but that is the gist of it, that I just told you. (Testimony 105, 106.)

The last time I saw Mr. Stewart was about one o'clock in the morning of March 17, 1921. I have lived in Kelso ever since up until about the middle of April, 1921. Since that day I have been in Woodland. My home is still at Kelso. My family is there, but I had been working at Woodland, and going back and forth. So far as I know, Mr. Stewart has never returned to Kelso since the morning when he left me in the early morning of March 17, 1921. (Testimony 105, 106.)

On cross-examination, in response to interrogatories propounded by Mr. MILLER, the witness further testified: (Testimony 106.)

Mr. Stewart, I believe knew that the bank had been taken possession of by the Bank Examiner before he disappeared. Mr. Stewart has occupied a prominent position in Kelso for a number of years; I would say he had been one of the leading citizens in Kelso; and been particularly active in

(Testimony of George F. Plamonden.)

promoting the welfare of the city and the interest of the public generally. (Testimony 106.) [134]

I believe that Mr. Stewart came to Kelso in 1898; and up to this time had been one of the most respected citizens of the community; he was a man almost universally trusted; he was also dealing largely in outside properties, quite a trader on side personal matters disconnected with the bank. He had a wife and little boy and had been in charge of this bank for a number of years. He knew that the bank had been closed before he disappeared; I believe that he talked to Mr. Hay over the telephone afterwards. (Testimony 107.)

This conversation that I mentioned which I had with him a few days before was after a demand had been made to pay the assessment levied against the stockholders; it was that and other things that he had in mind that made him seem rather changed; he had personally suffered a heavy loss on a farm that he owned by reason of the bad fall season of 1920. He had bought an extensive tract of land and had bought quite a lot of expensive machinery and had put in a big crop which was entirely lost by the early fall rains; his return on his crop was hardly anything and he had estimated his crop yield to be about twenty-five thousand dollars, all of which was practically lost. Beside that he owned one hundred and twenty-four shares of the capital stock of the bank and when this demand was made upon him it was necessary for him to raise between twelve and thirteen thousand dollars on the bank assessment.

(Testimony of George F. Plamonden.)

On that day I noticed that he was feeling rather blue. We did not mention the assessment as such; we just had the conversation that I related to Mr. McCamant. But that was the thing I particularly had in mind. He said not to worry about it, that [135] everything would come out all right, that in a year we would be able to look back and laugh at our troubles; and I honestly do think that he thought we would at that time. I do not know that he had any idea that the bank was going into the hands of the bank examiner as an insolvent bank. He was a very optimistic fellow; and considered himself a good trader. I would not go so far as to say that he was. He gave me the impression that he believed up to the very last that the bank was all right and would pull out all right. (Testimony 108, 109, 110.)

I think he did not urge the collection of some of these loans as vigorously as he ought to have done; but times were pretty hard along about then, and it was very difficult to make collections as a matter of fact. Some of these loans had been running for a number of years, and some had not been running for so long a time. The country immediately surrounding Kelso is largely a farming community; it was formerly what would be called a mill and logging country which had gradually developed into a farming community; and at the time this affair took place, during the winter of 1920 and 1921, it was largely farming community; and there had recently been some extensive diking districts established

(Testimony of George F. Plamonden.)

and the people were largely engaged in farming and cultivating those diking districts. Many people had planted oats principally and they were ruined in the September rains. As to my ideas as to the collection of these loans, I felt that Mr. Stewart should have endeavored to collect his out of town loans. I did not want him to stress the point he should be hard on his local people, [136] but I did feel that he should make every effort to collect from these people who lived out of town and did not contribute anything to the community in which he did business. (Testimony 110, 111.)

Under the law, we were required to keep in reserve fifteen per cent of our total deposits, that amount in cash in our bank, or cash in other banks; and we kept our reserve up pretty well. I cannot recall any time when our reserve fell much below fifteen per cent. We kept our reserve at fifteen or better trying to, all of the time. We dealt with several banks; we had money on deposit in the United States National Bank at Portland, and the National Bank of Tacoma; and the money that was in all of these banks, as well as the money which we had on hand actually in our own vaults, was sufficient to comply with the reserve demands of the law. It was some trouble to keep it up, but that trouble was more or less common to all banks during that particular time. My opinion would be that we were not the only ones having difficulty along that same line, except others might have been more than us. That was largely because of the financial con-

(Testimony of George F. Plamonden.)

ditions prevailing over the country and the loss of crops over that particular section. (Testimony 111, 112, 113.)

Myself and my brother and Mr. Stewart went over the notes and other securities the bank held on the evening of, I gather from these letters, the 13th of March. I cannot recall the exact date; I give only the approximate date. I cannot remember the day of the week. It is possible that these letters may have been written the same evening after we finished our work, but I would not say that for sure. [137] My brother runs the bank at Woodland, and was doing so at that time. He may have written that letter the same night and gone back to his own bank the next morning. I would not say whether he did or not; I do not remember. (Test'y 113, 114.)

The real object of making the examination of those securities at that time, by myself and my brother, would amount to approximately to find out if we wanted to purchase the bank. There was some talk between myself and my brother concerning that; I had asked my brother to assist me; and there was also a local man at Kelso who was a very intimate friend of mine; that I had gone to, and he had offered to help. I was then contemplating that I might buy out Mr. Stewart's interest in the bank and continue the business; and it was with that in view that I was looking over these securities from the standpoint of their value to me as a purchaser. We, in buying over the bank, wanted as near as we

(Testimony of George F. Plamonden.)

could, to see where we were *be at* in fixing the valuation of this paper. I was looking at the buyer's viewpoint; and Mr. Stewart was looking at it from the owner's standpoint. We discussed pro and con our ideas and exchanged ideas on the particular loans or particular notes.

I have not known of the fact that a great many of those notes that I thought were uncollectable had been worked out or will be worked out by Mr. Adams; but I am not surprised at it. I believe the indebtedness of the Lollock Transportation Company was one of the notes we figured was of no value. I would not say for sure, but that is my recollection. (Testimony 114, 115.)

The Cue note we considered worthless; I would be glad to hear that they had realized something on it. I do not know [138] how much had been collected. If there had been only a loss of fifty or sixty thousand dollars on those notes then my estimate would be too high. (Testimony 115.)

There was nothing in our examination at that time that suggested that the bank should close its doors; and we went ahead the next day, myself as well as the other officers, receiving deposits, believing that the bank was at all right. The idea of the conference at the St. Helens Hotel at Chehalis on March 6, and the reason why we were there was to work out plans for getting rid of some of this long paper that had been hanging fire. After that conference, the bank examiner decided to levy the assessment. As near as I can remember, Mr. Stewart

(Testimony of George F. Plamonden.)

always kept his notes pretty well renewed; that is, to all appearances and intents, there was very little past due paper in the bank, because he kept his notes renewed, every ninety days or whenever the case might be. (Testimony 116, 117.)

I felt that it would be better for the bank and everybody concerned, if some of this paper was cleaned up; and that it would be best for the bank if some other management was put in besides Mr. Stewart. That is what we really discussed and what we started to work out, yes. We were not doing that with the idea of closing the bank. (Testimony 117.)

Mr. Stewart sent me to speak to Mr. Brown. I went down to Kalama and saw Mr. Brown, and asked him if he would give us additional deposits if we would deposit warrants with him. It was a rather delicate message to deliver and I was as diplomatic as I could be under the circumstances. The idea of that particular conversation was that we wanted to get the money [139] first and then take down our warrants; which would result in our getting more deposits from the treasurer and his getting more securities; getting more than our bond provided for. My understanding and interpretation of the law was that he could not deposit more than the bond he had from the bank; but I also understood that he could take certain warrants for securities and make deposits on those warrants; that was the common practice. (Testimony 118, 119.)

(Testimony of George F. Plamonden.)

But Mr. Brown absolutely refused to do that, cause, as I say, there would be an interim during which time he would have no security. At any rate, nothing came of that at all, no action was taken. (Testimony 119.)

As to the matter of presenting my resignation, I had no personal difficulties with Mr. Stewart. There were two reasons why I presented my resignation. I went into them very frankly that evening. That particular day we had had a very trying day. I had spent practically all of that afternoon working on a code wire with one of our Eastern Banks on some rediscounts. At the end of the day and after the rest of the force had left, I was mentally and physically worn out. After the Long-Bell Company had decided to come to Kelso, there were at different times some talk of the possibility of the third bank at Kelso. Mr. Stewart and I had talked those things over at various times; but Mr. Stewart would never take the matter seriously. We had two banks in Kelso then. I suggested to Mr. Stewart at one time that he go back to Kansas City and see if he would not prevail upon those people who were thinking of putting in a bank to come in with us and make one big bank out of the Kelso State Bank. But Mr. Stewart did not accept that idea very well. Later I [140] told him of my idea for a third bank in Kelso, providing there was any possible chance of new people coming in, I thought local people should establish it first. That was the day I gave Mr. Stewart my resigna-

(Testimony of George F. Plamonden.)

tion. I gave him two reasons for it. The first reason which I went in to quite frankly with him was that his ideas and mine were quite at variance along banking lines; and that while my position there did not give me any authority to offer him suggestions along that line, nevertheless I felt that we were quite far apart in our ideas as to how banks should be run. We talked it over frankly. There was no personal feelings between us; Fred and I were like brothers there for five years together. I told him furthermore that I still had the idea of the third bank, I felt confident that if local people did not have a third bank in Kelso outside people would; most probably the Long-Bell people and those who were associated with them would come in and establish a bank of their own. Mr. Stewart pleaded with me to remain; he said he needed me. He said, "I will tell you what you do; if you will stay with me until after the spring clean-up," he said, "I will do my darndest to help you with your third bank if you still want to have it at that time, I will do my darndest to help you." That was just about his very words, "I will do everything I can to help you work it out," and I said, "Fred, I certainly would not jump out without sufficient notice and leave you short handed, and I most certainly will stay as long as you think you need me on the job." I said, "But," I said, "in the meantime I would like to have you consider my resignation active because I would not like to be thinking and [141] working on the proposition

(Testimony of George F. Plamonden.)

of a new bank and still be in here, loyal to you." I wanted to be open and above-board about it, and I think he was well pleased with my attitude. Those were the two reasons I gave Mr. Stewart for my resignation. (Testimony 119, 120, 121.)

It was not because I thought the bank was going on the rocks, or anything of the kind. I had occasionally talked the matter over with my brother, and he saw that I was dissatisfied up there, and he advised me if I felt that way, in that frame of mind, to get out and resign. (Testimony 121.)

For several years, during the winter months, we had rediscounted more or less, as the books will show; that is the custom which country banks have; and they were doing the same in the winter of 1921. We did not deal with the Federal Reserve Bank. We were not a member of the Federal Reserve Bank, so any assistance we had would have to be from our correspondents. (Testimony 121, 122.)

On redirect examination, in answer to interrogatories propounded by Mr. McCamant, the witness further testified: (Testimony 122.)

And the main difference between Mr. Stewart and myself in our ideas as to how a bank should be run was that I thought that Fred should collect more and borrow less; his ideas as to how to keep the reserve intact was to borrow. (Testimony 122.)

Referring to the code telegram I mentioned, I cannot give you the amount of notes but anyway

(Testimony of George F. Plamonden.)

we had sent a block of notes back to our New York Bank for rediscount. Mr. Stewart had made no prior arrangements for rediscounting [142] that particular block of notes as far as I can remember. He had our account with them debited with the amount so that it would show in our reserve in the meanwhile. The morning of that day we received a wire from this bank partly in code and partly not in code refusing to give us credit for the notes. Possibly Mr. Adams might have run across that telegram some place in the files. I thought at the time it was rather an odd wire to send us because it was, as I say, partly in code and partly not. It was a rather delicate matter to be sent in that particular way. Mr. Stewart asked me to reply to it in code that afternoon and see if we could not prevail upon them to take these notes. Using the A B A code which is not really made for that special purpose. I had considerable difficulty that afternoon. I worked practically all the afternoon forming a code message that would cover the ground sufficiently so that they would know what we were driving at. I finally got together what I thought would fill the bill and sent it. (Testimony 122, 123.)

Mr. Stewart frequently sent on notes and warrants and other bills receivable to some corresponding bank without having made any arrangement for their rediscount. (Testimony 123.)

In speaking of the "spring clean-up," I gathered Mr. Stewart referred to the time that county funds

(Testimony of George F. Plamonden.)

would come in, our deposits would be increased, and we would be able to pay our obligations to the corresponding banks. The "spring clean-up" really came from the deposit of the tax money.

(Testimony 123.)

I had not noticed until that particular day that Fred [143] looked blue and discouraged. Mr. Stewart was kept upstanding every minute. I noticed that particular day, I thought he looked pretty blue. (Testimony 123.)

I cannot recall having said to Mr. W. A. Illidge, on the day I was subpoenaed to come as a witness in this case, at Kelso, Washington, that Stewart had looked bad to me for two weeks prior to the time the bank closed. It is possibly true that I had noticed there was something the matter with him for two weeks before the bank closed. Mr. Stewart was this kind: Knowing him as I did, as I did know him, I really think sometimes that it is really wonderful how he did stand up under the strain he must have been under. He could not, of course, look any too well under the circumstances that he was working under at that time. (Testimony 124.)

I would say that comparatively a small part of the slow paper that we considered valueless was farm paper; most of them were other accounts than farmers; I would say that the most of it was out of town stuff, a large part of it we did not know very much about; the borrowers lived in

(Testimony of George F. Plamonden.)

other places. Mr. Stewart had made the loans originally. (Test'y. 124.)

I do not know whether Mr. Adams, in liquidating the Kelso State Bank, was able to collect any deposits from any other banks. (Testimony 124, 125.)

My wife heard from Mrs. Carothers a day or so ago, and they were then in San Diego, California; I would say that he had been away from Kelso about seven weeks. I think he spoke to Mr. Adams just before he left. So far as I know, he did not go away to avoid this trial. (Testimony 125.)

The examination of the assets and liabilities was made [144] at the Kelso State Bank in Kelso. Unless my brother might have had some with him, we did not have in the Kelso State Bank any of the stationery of the Woodland State Bank. (Testimony 125.)

Referring to the letters written by my brother to the Bank Commissioner under date of March 14, 1921, I noticed they are written on Woodland State Bank stationery; but I cannot recall seeing my brother after that examination was complete write any letters on Woodland State Bank stationery in Kelso. (Testimony 125, 126.)

It would seem to me, from this evidence which I now have, that that examination was completed not later than the evening of March 13, 1921; we worked pretty late, until two or three o'clock in the morning, I remember. (Testimony 126.)

(Testimony of George F. Plamonden.)

Referring again to the date of this conversation between myself and Mr. Stewart, I do not recall telling Mr. Illidge the day he subpoenaed me that the nearest date I could fix the conversation was the 3d of March; I remember of telling you, Mr. McCamant, that it was about a week before the bank closed. As far as I can remember those were the very words that I used. It was right around the 10th some place. (Testimony 126, 127.)

My understanding of the amount of money that Mr. Stewart would have to raise to pay the assessment on his stock is that it would be over Ninety Thousand Dollars. (Testimony 127.)

On recross-examination, in response to interrogatories propounded by Mr. MILLER, the witness further testified:

This demand for \$90,000.00 would amount approximately [145] to a demand that we were asking him to make good on in case we purchased the bank. We could not take it over unless he did. It meant that our coming into the bank was contingent upon his being able to do that. This conversation that I referred to was after this assessment had been levied on the stock. I cannot say that I noticed any difference in his appearance afterwards than it had been before, other than this one particular time I mentioned. (Testimony 128.)

Mr. Carothers is my father-in-law; and my mother-in-law, Mrs. Carothers has been quite seriously ill; and I would say that they went to Cali-

(Testimony of George F. Plamonden.)

fornia solely on account of her health; and not to avoid the trial. I do not think Mr. Carothers would try to avoid anything; he is not that kind of a man. (Testimony 128.)

(Witness excused.) [146]

Testimony of A. L. Tucker, for Plaintiff.

Mr. A. L. TUCKER, a witness called for plaintiff, being first duly sworn, on direct examination, in response to interrogatories propounded by Mr. McCAMANT, testified as follows: (Testimony 129.)

I am now and have been for about five years, Vice-President of the United States National Bank of Portland. The United States National Bank transacted business with the Kelso State Bank during the last six months that the Kelso State Bank was open. I am familiar with the matter of the warrants described in the amended answer in this case. Those warrants were secured by the United States National Bank as pledges with us for advances that we made the Kelso State Bank. We took those warrants in on what we term a repurchase agreement. Plaintiff's Exhibit 3 is one of the repurchase agreements that we had from the Kelso State Bank. Others were substantially in the same form. (Testimony 129.)

With reference to the agreement to repurchase, when the ninety days expired, from the dates December 6th and December 8th, 1920, we had some

(Testimony of A. L. Tucker.)

correspondence with the Kelso State Bank with reference to taking care of the obligations and we finally agreed to renewal if needed. (Testimony 130.)

This is a notice of the maturity of the repurchase agreement as is stated on it. That was sent out in the ordinary course of business. (Testimony 129, 130.)

The document identified by the witness was offered in evidence and marked Plaintiff's Exhibit 24. (Testimony 130.)

This letter handed me purporting to have been written by George F. Plamonden, assistant cashier Kelso State Bank, [147] dated March 7, 1921, reached our bank in the ordinary course of business. (Testimony 130.)

Letter identified by the witness was offered in evidence and marked Plaintiff's Exhibit 25. (Testimony 131.)

The witness identified a letter written by the witness to Kelso State Bank, which was offered in evidence and marked Plaintiff's Exhibit 26. (Testimony 131, 132.)

Mr. F. L. Stewart called at our bank on March 14th, with substantial cash items and took up the warrants that we were holding under the repurchase agreement, the block of \$7600.00 and a block of \$25,000.00. (Testimony 132.)

The photograph of the face and back of a draft drawn by Puget Mill Company on Pope & Talbot, San Francisco, for \$32,897.97, is a photograph of

(Testimony of A. L. Tucker.)

the one of the instruments figuring in the transaction about which I have just testified. This is a copy of one of the items that he had with him on that day, one used in settlement of the repurchase agreement. That draft was turned over to us at that time, and it was used to repurchase these two blocks of warrants. The stamp of "V" on the fact of the draft, identifies the department of the bank through which it passed, which in this instance, was the notes department, which was the department of the bank in which the repurchase agreements were carried. (Testimony 132, 133.)

When Mr. Stewart came into the bank to effect this arrangement, he went to the note department (Testimony 133.)

Photographic copy of face and endorsement of draft mentioned offered in evidence and face of draft marked Plaintiff Exhibit 27-A, back of draft marked Plaintiff Exhibit 27-B. (Testimony 134.)
[148]

A book was produced by counsel and the witness identified the same as a teller's cash-book; note teller's cash-book.

I find an entry with reference to this transaction in that book. From the position on the page where the entry appeared, it would appear that this transaction took place after the regular closing of the bank. In other words, the entries were made after our books were closed for the day. The record as found in the books of our bank of that transaction on that day read as follow: "The Kelso

(Testimony of A. L. Tucker.)

State Bank brought incredit items totaling \$39,-397.97.” (Testimony 134.)

That total is made up of an item of \$6500.00 and the \$32,000.00. The amount is not separated; it is added together and the totals appear here; and opposite the entry is a charge of \$33,491.59 which covers the repurchase agreement, the warrants. That was the liability of the Kelso State Bank on the warrants that we repurchased that day. I have read into the record all of the record there is on that subject there. When these warrants were repurchased, Mr. Stewart instructed us to place the warrants in safekeeping, in our safekeeping department, to issue a receipt for those warrants, send that receipt to the county treasurer Brown and to call him on the long distance telephone and apprise him of that fact, which we did. (Testimony 134, 135.)

We thought that we did send that receipt to the country treasurer, but we have heard since that it did not arrive in his hands. By mistake, it had been sent to the Kelso State Bank. (Testimony 135, 136.)

Counsel for plaintiffs then demanded defendant produce the original receipt given for warrants described and sent [149] to Kelso State Bank; to which demand defendants counsel replied that they were unable to find the receipt. (Testimony 136.)

Witness produced copy of receipt given at that time and identified the same; further testifying that there was attached to the original when it

(Testimony of A. L. Tucker.)

left the bank, the list of the warrants concerned in this case.

Carbon copy of receipt was offered in evidence and marked Plaintiff's Exhibit 28. (Testimony 136.)

And read to the Court.

Further testifying the witness said: The signature on that instrument is the signature of Mr. W. P. Choate, the teller in that department; that receipt under my instructions. I had the conversation with Mr. Stewart. Those warrants are still in the bank except as to one or two or three of them which may have been paid; where they had been paid the bank has retained the proceeds. The bank makes no claim to those warrants, or claim of ownership; we still hold them under that receipt. The Fidelity and Deposit Company and the Maryland Casualty Company never made demand for those warrants. (Testimony 137.)

I have never seen Mr. Stewart since that day. I went over to the teller's cage when I talked with Mr. Choate; but I do not recall Mr. Stewart accompanying me across the lobby. (Testimony 137, 138.)

On cross-examination, in response to interrogatories propounded by Mr. MILLER, the witness further testified:

Through the repurchase agreement on the warrants, the Kelso State Bank became indebted to our bank in the first place in the sum of about

(Testimony of A. L. Tucker.)

\$7988.00. The Kelso State [150] Bank owed us that amount, they borrowed that amount from our bank on a repurchase agreement of those warrants. I stated in our answer that they owed us on repurchase agreement because I did not want to interpret the effect of that agreement legally. The United States National Bank purchased these warrants totaling that amount under a repurchase agreement. I am not competent to say. (Testimony 138.)

The Kelso State *State* received from your bank \$7,988.00 in the beginning; and at a later period, it received \$26,000.00; and \$783.00, and pledged those warrants under a repurchase agreement with us. The repurchase agreement was merely a custom which our bank has in dealing with county banks; it was really a loan; and it was so understood to be, a loan; we collected interest upon the money from time to time, usually monthly. We did in this case. We did not collect any interest at all on the warrant. We did collect interest upon what the banks owed us. (Testimony 139.)

The Kelso State Bank agreed to pay us the interest, and did pay us interest on this loan. That is a convenient way we have of dealing with country banks. (Testimony, 139, 140.)

It was the understanding in this instance that we should have this pledged as security for our loan, and if there was an insufficient sum realized to compensate us upon our loan we would present our claim to the bank for the balance. That is

(Testimony of A. L. Tucker.)

the course we would have pursued if there was not sufficient to pay us; and the repurchase agreement was just the method we had of expressing what we really intended, that this bank had a loan, and these documents were pledged as collateral security. We entered and [151] *and* carried these as loans in our banking records, and reported them to the Government as loans, secured by collateral security. If we had purchased these warrants outright, they would have been deemed to be an asset of the bank, and held as assets, and would have appeared in our records in another department. In this instance however, they were recorded in our loan department, and were held as security to pay the loan. (Testimony 140, 141.)

On March 14, when Mr. Stewart brought in with him on that date, several cash account items, those items were deposited in the bank; and at that time there was also to the credit of the Kelso State Bank a sum of money, the amount of which I do not know. I have the ledger sheet here and upon looking at it, I find that on the evening of the 13th, according to the record, the Kelso State Bank was overdrawn on our books \$17,523.60. That is occasioned by a bookkeeping entry, and there were credits to go against that that had not been posted. They were posted on the following day, which gave Kelso State Bank a balance of \$15,967.99 and giving them a credit on the 14th of about \$15,000.00. Then there was deposited with the checks that Mr. Stewart brought in \$39,000.00 more. There

(Testimony of A. L. Tucker.)

were several other credit items that came in during the 14th, which went into the account, there having been made several entries on that day, and the last entry would be the balance for the day. Reading these credits off, there was a remittance of \$3,362.08; there was an item of \$4.65; and there was a credit of \$39,397.97. So that altogether they had on hand at that time a total deposit of \$55,370.61, and were charged with the amount of the loan \$33,491.59, which was [152] a charge made against the entire account which the Kelso State Bank had there, and which was taken out of the bank balance. (Testimony 142, 143.)

On redirect examination, in response to interrogatories propounded by Mr. McCAMANT, the witness further testified:

If there had been a default, and we had desired to avail ourselves of what has been spoken of here as security we would have collected the warrants and applied them upon the repurchase agreement. We would not have considered it necessary to foreclose the pledge on the warrants, but we would have collected them without any other proceedings, and if the warrants were paid, we would have applied the proceeds accordingly. If they had not been paid, there are a good many contingencies to be considered; the reason for their nonpayment would depend upon what our course would be; in any event, I do not think we would have foreclosed on that security; I do not think we would have brought a suit in equity in this or any other court

(Testimony of A. L. Tucker.)

for the purpose of foreclosing on that security in any event; however, that would depend on advice of counsel. It is not the custom of the bank to do that; we have never had occasion to. If we had had occasion to sell the warrants, we would not sell them without regard to the rights of the bank that had agreed to repurchase them; but if the date had expired at which the Kelso State Bank was to repurchase, and we had not granted any extension, we would have taken such legal measures as would have been necessary. Just what those would have been I cannot say. In the practice of our bank, we have never started a foreclosure suit to enforce that character of security. (Testimony 143, 144.)

When Mr. Stewart came in he had this interview with me, [153] and I placed the warrants in our safekeeping department, and instructed the teller in charge to issue a receipt. (Testimony 144, 145.) When Mr. Stewart first came in, we went to our note department; if there were any deposit slips made out, they were made out after the transaction I have described had taken place, for the mere purpose of bookkeeping. (Testimony 145.)

Plaintiff's Exhibit 27-A and 27-B was collected in the ordinary course of business, and our bank received the proceeds thereof. (Testimony 145.)

On recross-examination, in answers to interrogatories propounded by Mr. MILLER, the witness further testified:

This large check was deposited through our note

(Testimony of A. L. Tucker.)

department and not along with the other checks in the deposit part of bank. The bank took the credit; and the endorsement on the back of the note, payable to the United States National Bank, is the same endorsement that would have been made on it as if that draft had been left there on deposit; the Bank of Kelso was given credit for it, and out of the balance it paid what it owed us. Mr. Stewart suggested the receipt, which I authorized, and as far as our bank was concerned, from that time on we were simply holding the warrants in custody for Mr. Stewart, or for whoever Mr. Stewart would direct. We did not have any further claim upon the warrants; and we did not have any correspondence with the county treasurer in which he agreed to take those warrants in any manner; they were merely left there in our custody and Mr. Stewart told us to send this receipt (Plaintiff's Exhibit 28.) (Testimony 146.) That is all I know about that paper; nothing further ever came up, as far as I know. We have never had any defaults in any of this kind [154] of cases, so that I would have to go and consult with Mr. Fales before I would know what to do. The deposit of this \$33,000.00 was made out by our teller; Mr. Stewart did not deposit this to the account of the bank and then draw a check. (Testimony 147.)

Q. (By Mr. MILLER.) I think we have that deposit slip here, and we would like to call his attention to it. It is made out by Mr. Stewart?

A. It was?

(Testimony of A. L. Tucker.)

Q. Yes. Just a moment, I would like a moment to find it. Mr. Tucker, isn't it possible that Mr. Stewart made out his deposit slip before he left Kelso? A. I have no remembrance of it.

Q. I call your attention to a copy that was found by the Bank Examiner in the records. Could you know whether the original of that would be in your bank?

A. We searched our records for it, but could not find it. They are destroyed after a certain time; we keep them one year.

Q. Now, looking at that what would you say about it?

A. I would say that this was the deposit that was made with the items referred to.

Q. And that it was made out by Mr. Stewart?

A. Made by the bank, Kelso State Bank.

Mr. MILLER.—I would like to offer that in evidence?

COURT.—Is that from the bank files,—your bank files?

Mr. MILLER.—No; Kelso State Bank's.

Mr. McCAMANT.—I object, your Honor, on the ground we haven't traced it into the United States National Bank.

Mr. MILLER.—Mr. Tucker said that the original of those were destroyed. [155]

COURT.—I don't think it is material in the case.

Mr. MILLER.—I think it may be material, because it shows they were put in in general deposit with bank.

(Testimony of A. L. Tucker.)

COURT.—It don't show that was the purpose. It may have been his original purpose.

Q. I will ask Mr. Tucker more about it. Assuming that it was made out by Mr. Stewart before he left Kelso?

A. In either event, it would make no difference to us what department it went into.

Q. It went in as a deposit, in any event?

A. Yes, sir. There would be a record made by the Kelso State Bank on their own account.

COURT.—In addition to that, there would be a check checking it out, wouldn't there?

A. Yes, sir.

COURT.—You would not have to check this \$33,000.00 if he deposited it?

A. It could be checked out through a charge slip made by the employees.

COURT.—But the Kelso bank deposited it to its own account, and then used a check to take up the warrants, there would be Stewart's check, or the Kelso Bank's, checking it out?

A. Or a debit slip to the account. We might debit the account ourselves for the amount, under his instructions.

Q. (Mr. MILLER.) You don't know how that was done in this case?

A. No, sir.

COURT.—You may put that in evidence.

Mr. McCAMANT.—I reserve an objection.

COURT.—Yes; you may have your objection

(Testimony of A. L. Tucker.)

Deposit slip offered in evidence and marked Defendants' Exhibit "B." (Testimony 147, 148, 149.)

On redirect examination, witness further testified:

Plaintiff's Exhibit 5, purporting to be two debit slips, one for \$7663.97, and one for \$26,069.21, are debit slips covering the retirement of these warrants by the Kelso State Bank; those debit slips were made out by our note department, and the account of Kelso State Bank was charged with those items; these deposits slips attached thereto were made out at the same time. (Testimony 149, 150.)

When Mr. Stewart came in, he stated that he had received his county funds, and was ready to retire the warrants we were holding under the repurchase agreement; he also requested us to place the warrants in safekeeping, and to telephone the county treasurer that we were holding them for his account. (Testimony 150.)

When I stated a few moments ago, that we subsequently had no interest in these warrants, and held them for Mr. Stewart or any one he might designate, perhaps that ought to be explained. Suppose the bank had continued open, and Mr. Stewart had asked us at a later date to make some other disposition of the warrants other than that called for by the receipt which we had given, we would not have honored that request until we had been relieved of issuing the receipt to the county treasurer. In other words, we would not have consented to any disposition of those warrants which

(Testimony of A. L. Tucker.)

was not approved of by the county treasurer, or those who had succeeded to his interest. (Testimony 150.)

Going to the note department of our bank rather than to the deposit department, when Mr. Stewart came in, I do not [157] think that had any particular significance, except the convenience of discharging an obligation in that department. In other words, we regarded the repurchase agreement as an obligation. (Testimony 150, 151.)

On recross-examination, the witness further testified as follows:

Some of these debit slips were for interest, and some of them show when the bonds were deposited with us. Particularly referring to Plaintiff's Exhibit 5, in stating that I would not have given these warrants up because of this outstanding receipt to the treasurer, I am saying that we assumed they were deposited under his jurisdiction; we had made an agreement to hold them, and we were going to do it. If the county treasurer had demanded those warrants, we would have turned them over to him without any more authority from Mr. Stewart. But he never demanded them. (Testimony 151.)

(Witness excused.) [158]

Testimony of L. P. Brown, for Plaintiffs.

L. P. BROWN, a witness on behalf of plaintiff, being first duly sworn, on direct examination, in response to interrogatories propounded by Mr. McCAMANT, testified as follows:

I am the county treasurer of Cowlitz county,

(Testimony of L. P. Brown.)

Washington; this is my fourth year in office. (Testimony 152.) I was in office as such county treasurer of Cowlitz county in the spring of 1921; and as such treasurer carried an account with the Kelso State Bank. The agreement under which these deposits were made stated that the funds deposited in that account were county funds and depository bonds were put up to secure the deposits. (Testimony 152.)

Certified copies of the three bonds mentioned and of the action of the County Commissioners in approving the giving of said bonds, in the amount of \$70,000.00 were offered in evidence and marked Plaintiff's Exhibit 29. (Testimony 153.)

On the failure of the bank, the surety companies who are the plaintiffs in this case, paid the amount of the deposit standing to my credit. I cannot state the amount of that deposit unless I have my records. I then assigned to the sureties the claim of the county against the Kelso State Bank. These three assignments, two running to the Fidelity & Deposit Company of Maryland, and one to the Maryland Casualty Company are the assignments I executed, and my signature appears on all of them. The amount of my deposit was \$64,492.49 on the day when the bank closed; and the assignments show that payment was made on April 25, 1921.

Assignments offered in evidence and marked Plaintiff's Exhibit 30. (Testimony 154.)

At the time I was making these deposits, I believed the [159] Kelso State Bank to be solvent,

(Testimony of L. P. Brown.)

and able to pay its obligations. If I had not thought so, I would not have given them any more deposits. If I had known on March 6, 1921, that the Banking Department of the State of Washington had held a meeting with the President and the Directors of the Kelso State Bank, other than Mr. F. L. Stewart, and had held that meeting at Chehalis rather than at Kelso, and had then insisted that Mr. Stewart be eliminated as an officer of the bank, and that a number of the securities carried as assets in the bank be eliminated, and that an assessment of one hundred per cent be levied on the stockholders, I would not have made any more deposits in that bank; but I did not know at any time prior to the closing of the bank that such a meeting had been held at Chehalis. (Testimony 155.)

I had a conversation with Mr. George F. Plamonden some time during the last of February or the first of March with reference to making further deposits in the Kelso State Bank. As I recall now, he came to the office and requested deposits, and the substance of our talk was that if he would put up the security he would possibly get the deposits. Examining Plaintiff's Exhibit 27, that appears to be a photograph of a draft that I deposited in the Kelso State Bank. That draft was received in payment of taxes, and it is so stated on the draft.

On March 10, 1921, I deposited in the State Bank at Kelso a check which was in payment of taxes for the amount of \$5136.41, drawn by Ida C. Oxtoby, of San Anselmo, California. I demanded a return of

(Testimony of L. P. Brown.)

the money I had deposited on the 14th of March, after the closing of the bank; I demanded the full amount of my deposit. I made that demand through the First National Bank, and the check [160] was protested for nonpayment. (Testimony 156.) I did not personally have any talk with the United States National Bank, or with any official or officer thereof with reference to the warrants left there for my protection on or about March 14, 1921; nor did they communicate personally with me on the subject. They called up my deputy in my office, and told him there had been warrants deposited there; and my deputy passed that information on to me. My recollection is that was on March 14, 1921. (Testimony 156, 157.)

As far as I know the deposits made with the Kelso State Bank were made pursuant to the terms of the bonds which have been offered in evidence; and in case those bonds had not been given I would not have made the deposits. (Testimony 157.)

On cross-examination, in answer to interrogatories propounded by Mr. McCAMANT, the witness further testified:

I could not have made such deposits under the law unless I had a bond. The law required me to take a bond as security. I understood, and the bonding company understood, that according to the terms of the agreement with the Kelso State Bank, I was to get interest on these deposits, amounting to two per cent on daily balances. I did get from the bank interest on those deposits. I also received

(Testimony of L. P. Brown.)

interest on those deposits up until the day the bonding companies paid the claims, according to the terms of the bond. (Testimony 158.) The only account we carried with the Kelso State bank was a general checking account, which account has been carried there ever since I have been in office, in September, 1918; and during all of [161] that time I have had a general checking account in that bank. I never at any time made any special deposit, trust account, or anything of that character. The deposit that I made on March 10, 1921, I intended should go into the general checking account; and the same is true of the deposit made on March 14, 1921. I collected interest on the daily balances. I looked to my bond for my protection for the amount of money I had in the bank; apparently I did not pay any attention to whether the bank was solvent or insolvent. In my opinion, the bonds were good, or I would not have accepted them; because I was personally responsible for the money that went into that bank in case of any loss. I never accepted any of the warrants left on deposit with the United States National Bank as collateral security, and as far as I ever knew they were never in my custody or control, or anything of that kind; I did not even have a list of them; and I had never even seen them, except possibly some of them may have been warrants issued by our county, and I may have seen them in the first place; but I have never seen them since that time. I don't know whether I could have taken them under the law. I know I never did because I never saw the warrants or securities. I

(Testimony of L. P. Brown.)

never had any arrangement with Mr. Stewart whereby it was agreed that I should take these warrants as collateral security for the money I had on deposit in the Kelso State Bank. I never even talked to him about such a thing. Our deposits in the bank ran up larger of course during March and April and October and November. (Testimony 161, 162.)

(Witness excused.) [162]

Testimony of Thomas E. Davis, for Plaintiffs.

THOMAS E. DAVIS, a witness on behalf of plaintiffs, being first duly sworn, in response to interrogatories propounded by Mr. McCAMANT on direct examination, testified as follows: (Test'y 179.)

I am one of the attorneys for the plaintiffs in this case. I made an examination of the records of the Kelso State Bank subsequent to the closing of the Bank on March 17, 1921. Upon that examination, I found in the files of the bank the original of the receipt given by the United States National Bank for certain warrants under date of March 14, 1921, being 'Plaintiffs' Exhibit 28, which is a copy which I made from the records of the bank at that time. The original receipt which I found in the records had attached to it a list of warrants; and this list is a copy of the list which we made on the adding machine at that time, from the files of the Kelso State Bank. (Test'y 179, 180.)

Copy of receipt offered in evidence and marked Plaintiff's Exhibit 31. (Testimony 180.)

(Testimony of Thomas E. Davis.)

On cross-examination, the witness further testified: I have done some work in the preparation of this case for trial. (Testimony 180.)

(Witness excused.)

The above and foregoing was all of the testimony offered by plaintiffs in their case in chief; and plaintiffs then rested. [163]

Thereupon, defendants introduced the following testimony:

Testimony of James Wallace, for Defendants.

JAMES WALLACE, a witness for defendants, being first duly sworn, on direct examination, in response to interrogatories propounded by Mr. Miller, testified as follows: (Testimony 181.)

I live at Kelso, and I have been a resident of Kelso for seventy years; I have been there all my life; my occupation is farmer. I was a director of the Kelso State Bank for some years before it closed, but I did not have anything to do with the active management of the bank. I never at any time had any information that would lead me to believe that the bank was insolvent; I considered it was perfectly solvent up until it was closed. (Testimony 181.)

On cross-examination, in response to interrogatories propounded by Mr. McCAMANT the witness further testified:

I was present at a conference in November, 1920, for about one hour, with Mr Bennett and Mr. Minshull, at the time they were making an examination

(Testimony of James Wallace.)

of the bank. Those gentlemen did not make any complaint to me about the condition of the bank at that time. Mr. Stewart called me into the conference; the examiners never did call me. The conference simply consisted of going over the bank accounts, notes, etc. There were some notes there they criticised, but I never heard them say there were any there on which collection could not be made. I heard them criticise a lot of the paper considerably. I took no part in the management of the bank, although I was in there frequently. I never at any time made a particular examination of the assets and liabilities of the bank, although I did make some examination, a year or two years before it was closed; but during the two years which immediately preceded the closing [164] of the bank, I had made no examination of its assets. I do not know what its liabilities were at the time it closed. I know what the deposits were. I know nothing about the management of the bank; I always trusted that to Mr. Stewart. I was not invited to the meeting at Chehalis held March 6, 1921. (Testimony 183, 184.)

On redirect examination the witness further testified as follows:

None of the bank examiners ever made any complaint to me or to the other directors, except that I only know in regard to Mr. Baxter. Mr. Marsh at that time was living at Dryad, Lewis County, and was not living in Kelso at that time. (Testimony 184.)

(Witness excused.) [165]

Testimony of P. Baxter, for Defendants.

P. BAXTER, a witness for defendant, being first duly sworn, on direct examination, in response to interrogatories propounded by Mr. MILLER, testified as follows: (Testimony 185.)

I have lived in Kelso a little over forty years; I was a director of the Kelso State Bank for three or four years. I am a farmer by occupation. I did not know anything about the bank being in an unsafe condition on March 14, 1921, nor at any other time. No complaints were made to me by any of the bank officers, or the Bank Examiners at any time; and I never was called into any conference or consultation at any time, and I never knew anything about it. As to its financial condition, by the action of the Bank, I thought it was all right. (Testimony 185.)

On cross-examination, in response to interrogatories propounded by Mr. McCAMONT, the witness further testified:

I never made a particular examination of the assets and liabilities of the bank; I used to take their word for it a great deal; they used to tell me what it was, and I could see the papers, but I never figured them out. (Testimony 185, 186.)

(Witness excused.) [166]

Testimony of George F. Plamonden, for Defendants.

GEO. F. PLAMONDEN, a witness for defendants, having been previously sworn, on direct examination, in response to interrogatories propounded by Mr. MILLER, testified as follows:

I presume these warrants which were in the United States National Bank were wanted for the purpose of securing additional deposits. My purpose in seeing the Treasurer about the warrants was to have him make additional deposits, and to take down additional warrants to give him additional security. I do not recall the exact date that I had that conversation with the treasurer; but it was some time early in March. At that time, the treasurer's deposits did not equal his bonds by \$40,000.00. There are five banks in the county, and the entire county funds must of necessity be taken care of by the five banks; and we were given to understand that by dividing it up equally, that each bank would get around \$150,000.00 out of the peak funds, the March funds; and Mr. Stewart was endeavoring to plan ahead on getting his full share of the deposits. That would be additional deposits and additional security to the bonds which the treasurer had. In other years, we had had larger amounts. Mr. Adams could better answer as to that, because he has the records, but our balance would run up higher than \$60,000.00, and higher than \$70,000.00 at times. I would not want to say how much our

(Testimony of T. H. Adams.)
maximum was. The books will show. (Testimony
187, 188.)

(Witness excused.) [167]

Testimony of T. H. Adams, for Defendants.

T. H. ADAMS, a witness for defendants, having been previously sworn, on direct examination, in response to interrogatories propounded by Mr. MILLER, testified as follows. (Testimony 189.)

The witness identified minutes of directors' meeting of Kelso State Bank of May 26, 1919, which were offered in evidence and read into the record, as follows:

May 26, 1919.

"Minutes of the meeting of the Board of Directors of the Kelso State Bank.

"Pursuant to the call for a Director's meeting the Board met in the offices of the Kelso State Bank at 3 P. M., Monday, May 26, 1919.

"Members present: President F. M. Carothers, and Vice President George L. Marsh; Director James Wallace, Cashier and Director F. L. Stewart; Assistant Cashier Geo. F. Plamondon.

"The minutes of the previous meeting were read and approved. Letters of the Bank Examiner were read, and also letters from A. L. Mills, President of the First National Bank of Portland, and E. G. Crawford, First Vice President of the United States National Bank of Portland, both complimenting the Kelso State Bank on its fine balance

with them, and the fact that they were not being asked to carry any rediscounts or warrants or other items of that sort, also volunteering their assistance of any need at any time.

“The last published statement of May 12 was read and examined carefully and compared with previous statements for the past nine years. The gradual growth since 1910 was noticed and particular attention given to the fact that the statement showed a cash reserve against deposits of 32%, average for the preceding month having been 28%. [168] In addition to this notice was drawn to the fact that the bank had on hand in Liberty Bonds, and School, City, County, Road and Bridge Warrants, and U. S. Treasury Certificates, approximately \$32,000, as additional secondary reserve.

“Careful attention was given to the various loans, particularly to several oversize slow loans, including those of the Cowlitz Bridge Company, J. H. Gallagher and A. E. Johnson, and those of John L. Harris, and it was the consensus of opinion of the directors present that none of these loans would result in losses to the bank. F. L. Stewart, the Cashier of the bank, volunteered to execute a blanket guarantee covering the amount of any possible losses on any of these loans in an amount suggested by himself of not to exceed \$50,000. All of the other directors present expressed themselves as feeling that this was unnecessary but that they would be willing to accept it if he thought it best, and it was left for him to draw such a blanket

guarantee as seem to cover these matters, and to submit same to a later Directors' meeting.

“The Directors authorized loans of not to exceed \$2,000 as might be required to Geo. F. Plamondon, Assistant Cashier of the bank. Careful examination of the loans showed no other officers or directors owing the bank, with the exceptio nof one temporary loan of \$300 to Director James Wallace which was authorized by the directors.

“The general condition of the bank was carefully looked into and the fact that no rediscounts of any sort, with the exception of one Portland acceptance of \$367.65, were on the books, and that the reserve showed exceptionally high for this period of the year, and that the bank had a good strong secondary reserve heretofore mentioned in the way of bonds and [169] warrants, and that a very strong cash reserve had been carried for the past several months, was favorably commented on.

“There being no further business the meeting adjourned.

“F. M. CAROTHERS,

“President.

[Corporate Seal]

“GEO. L. MARSH,

“Vice-President.

“JAMES WALLACE,

“Director.

“F. L. STEWART,

“Cashier and Director.

“GEO. F. PLAMONDON,

“Assistant Cashier.”

(Testimony of T. H. Adams.)

(Testimony 189, 190, 191.)

The criticism of bad paper in the bank has extended back in a general way as far back as the bank has been examined. Some of that paper we collected, some of it we traded out into other forms of security and some of it is in the bank yet. I have here the original claims presented by the bonding companies in this case; and they are the only claims which have been presented to me. (Testimony 192.)

Copies of claims attached to pleadings. (Testimony 193.)

The list of claims on which dividends have been paid, which I gave the Court, includes the claims of these two (plaintiff) companies. The claims allowed included the claim of Maryland Casualty Company for the amount set forth in their claim, upon which a payment of twenty per cent has been made, and also the claim of Fidelity & Deposit Company of Maryland, upon which a twenty per cent dividend has been paid. The witness identified cancelled dividend checks which had been issued to the corporations named, Maryland Casualty Company, and Fidelity & Deposit Company of Maryland, by the witness as Deputy Supervisor of Banking of the State of Washington. (Testimony 194.)
[170]

Before paying these claims, I made up a list of the claims, and got an order of Court directing me to pay the dividends, and these are the checks by which the dividends were paid.

(Testimony of T. H. Adams.)

Checks offered in evidence and marked Defendant's Exhibit "D." (Testimony 195.)

Those checks were all paid.

On cross-examination the witness further testified:

Upon being shown certain documents, the witness testified that the signature appearing thereon was his signature and that he wrote them. The witness also identified a form of receipt referred to in the letter, and also letter from Grinstead & Laube. The instruments thus identified by the witness were then offered in evidence and marked Plaintiff's Exhibit 32. (Testimony 195, 196.)

We base our suit against the directors of the Kelso State Bank upon their neglect of their privileges and duties to properly act as directors. Asked if witness had not discovered, as a result of his investigation, that while Mr. Stewart was in charge of the Kelso State Bank there were a number of cases where bad paper would be taken out of the bank and put in safe deposit boxes of customers and good money of the customers be put in the bank instead of the bad paper, the witness testified:

Mr. Stewart was very much in the habit of making loans for his customers, and frequently a customer would in some way consent or authorize Mr. Stewart to make a loan for him, [171] or buy some paper for him—invest money in some form—whereupon Mr. Stewart would place in the customer's safe deposit box, perhaps, or in some instances

(Testimony of T. H. Adams.)

deliver to him, paper that the department of Banking was criticising. I do not believe I recall an instance of what you would call good money. He debited the account, or the man gave him a check on the bank, as a rule. I don't know whether you would call that good money or not. There is some litigation that I now have with people who charge the bank with complicity in that kind of a transaction. Involved in litigation that is in court at this time and undecided, there is some seventeen or eighteen thousand dollars. There are other claims which are based upon that same sort of a thing, but we are holding them up to see if we can get some information from the court as to how to treat them in the future. In addition to this seventeen or eighteen thousand dollars, I found from the record, as appears from my testimony yesterday, that I had that there was \$52,000.00 presented and rejected at the time of the report to the court; and some of that has been withdrawn and perhaps more filed; so it would in round numbers be \$50,000.00 including the various other claims which have not yet got into litigation. (Testimony 197, 198.)

On redirect examination the witness further testified as follows:

When a transaction of that kind was carried out, the bank did not lose anything. Mr. Stewart would take slow paper out and put money in place of it. The bank did not lose anything in that kind of a transaction. In these suits it is a question of how far the bank should be held responsible. I might

(Testimony of T. H. Adams.)

say further that these suits are not all [172] based on that one thing, but some of them are. Some of the loans that he sold out were perfectly good, were realized on, and he invariably personally guaranteed all of that paper. I do not recall a single instance where he has neglected to personally guarantee it. The checks to the Fidelity & Deposit Company in evidence were not delivered to that company as soon as the checks were delivered to the Maryland Casualty Company, for the reason that we have a bond of the Fidelity & Deposit Company of \$25,000.00 and the bonding company seemed to be very dilatory about taking care of it and while in Mr. Hanson's office one day, he or Mr. Orland, I believe Mr. Hanson remarked that they would like to see some money on this dividend account, and I suggested that they might hurry up the payment of their bond which would help me pay something. Afterwards, it occurred to me it would be a very good plan to withhold the payment of their check until they made some sort of a move on their bond for Mr. Stewart, and I held them until I was ready to sue the bonding company. (Testimony 198, 199.)

At the time I presented the claim, as I understand, our law allows us ninety days in which to present our claim after making the demand, and I had gone to Tacoma to make a formal demand upon them for the payment of the bond. During that meeting, some question was raised about this claim, and then I talked to them about delivering these dividends, but they were not at that time claiming

(Testimony of T. H. Adams.)

a preferred claim or anything of that kind. They have never made any other claims until this time.

(Testimony 200.)

On recross-examination the witness further testified as follows:

I did bring an action against the Fidelity & Deposit [173] Company on the bond given for Mr. Stewart, and that action is now pending in the United States District Court for the Western District of Washington, Southern Division. (Testimony 200.)

(Witness excused.)

The above was all of the testimony introduced by defendants.

The plaintiffs then introduced the following testimony in rebuttal:

Testimony of H. F. Hanson, for Plaintiffs (In Rebuttal).

H. F. HANSON, a witness for plaintiffs in rebuttal, being first duly sworn on direct examination, in response to direct interrogatories propounded by Mr. McCAMANT, testified as follows:

I am engaged in the general insurance business, including the issuance of surety bonds. I have represented the plaintiff companies in the settlements growing out of the failure of the Kelso State Bank. I did not personally pay the money over but I prepared the checks and sent a personal representative to make the deliveries under my instruc-

(Testimony of H. F. Hanson.)

tions I prepared the claims which have been introduced in evidence here. When those claims were presented, I had no knowledge of the circumstances under which the deposits had been made by the County Treasurer in the Kelso State Bank; nor did I have any knowledge, at that time or at any other time, prior to the payment of the claims, of there being any collateral available for those deposits.

(Testimony 201.) I did not know anything about any warrants being held by the United States National Bank as security for the deposits made [174] by the County Treasurer of Cowlitz County.

On cross-examination the witness further testified:

I was connected with the company at the time these bonds were issued. The matter was not personally discussed by me with Mr. Stewart nor with the County Treasurer. The matter was handled by correspondence. We had a representative at Kelso, Mr. George F. Plamonden, who looked after the matter for me, took the applications, and submitted them, and the bonds when executed were sent to him. He was our agent at Kelso for the purpose of soliciting applications for bonds of all kinds. He got this business for us. The usual commission was paid to the agent; I presume it was paid by the bank. We were paid, and Mr. Geo. F. Plamonden was our agent. I did not talk to Mr. Plamonden after the bank failed, about this claim, until after payment, after our claim had been paid to the

(Testimony of H. F. Hanson.)

County Treasurer for the claim upon us. We paid the County Treasurer and talked to him after we had done so. We knew when we paid the Treasurer, and when we presented our claim, that this claim was for deposits made by the Treasurer alleged by him to have been made in this bank. We did not talk with the Treasurer as to when he had made these deposits; and did not ask him because we had certificates from him as to the amount; not when the deposits were made, but merely of the amount on deposit when the bank closed. I presume we had full opportunity of making an investigation and examining the books of the bank and finding out when they were made, but we did not attempt to. We knew when we presented our claim to the bank examiner, that the bank had failed and had been closed on the 17th of March, 1921. We presented our claim on April 25, 1921, a little over a month after [175] the bank had closed; and we knew that the bank at that time was supposed to be insolvent, when we presented our claim. I knew that the matter had grown out of deposits made by the County Treasurer in this bank. I don't remember when I talked with Mr. Plamonden about it. He happened to be in our office several months afterwards, as I recall it, and the matter came up only in casual conversation. (Testimony 204, 205.)

I did not go to Kelso or Kalama when I made this demand. I sent a man from the office to Kelso with instructions to deliver the draft to the Treasurer upon obtaining his signature to the necessary

(Testimony of H. F. Hanson.)

receipts and certificates; and he was to accept the certificate of the treasurer as to the correct amount on deposit. He was not instructed to examine the treasurer's books as to the amount he had on deposit, although I suppose we had that right. I did not know any warrants were deposited as collateral for our liability, except what I have heard as a result of this case. I have only heard mention made of certain warrants; I had no knowledge of them at the time. We are general agents for these companies at Tacoma; and Mr. Rowland of our firm went to Kelso immediately after the closing of the bank for the purpose of making an investigation. That was before any claim was made upon us; he went down there not for the purpose of making an examination of the bank but for the purpose of finding out our liability. (Testimony 206.)

Mr. Plamondon is still our agent there, and he was our agent during all of this time. (Testimony 207.)

On redirect examination, the witness testified:

The authority of Mr. George F. Plamondon was merely to receive applications for bonds, and submit them to us for [176] consideration; he may have had authority to sign certain court and probate bonds, but not bonds of this character. He had no authority apart from the signing of that class of bonds; he was merely what we term a local agent; I do not believe he has any such authority from the Maryland Casualty Company. It is my recollection

(Testimony of H. F. Hanson.)

that he is not the agent for the Maryland Casualty Company.

On recross-examination, the witness further testified:

It may be possible that Mr. Plamondon had authority to issue bonds in certain court matters, in matters of probate and things of that character, but when it came to the Treasurer's office, he would have to take it up with our office. (Testimony 208.)

(Witness excused.)

Whereupon the taking of testimony was concluded, and the cause submitted for judgment.
[177]

In the District Court of the United States for the
District of Oregon.

IN EQUITY—No. E—8573.

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND, a Corporation, and MARY-
LAND CASUALTY COMPANY, a Corpora-
TION,

Complainants,

vs.

UNITED STATES NATIONAL BANK OF
PORTLAND, OREGON, a Corporation, and
the KELSO STATE BANK, an Insolvent
Banking Corporation, and JOHN P. DUKE,
as Supervisor of Banking of the State of
Washington, in Charge of and Liquidating
the Assets of the Kelso State Bank.

Defendants.

Order Certifying, Allowing and Settling Statement of Evidence.

This is to certify that the foregoing statement of evidence and proceedings in said cause is hereby allowed and settled, and that it contains all of the evidence material to the hearing of the appeal in said cause, except the original exhibits introduced in evidence at the time of the trial, being Plaintiffs' Exhibits numbered 1 to 32, inclusive, and Defendants' Exhibits "A" to "D," inclusive, which the Clerk of this Court shall certify as the original exhibits in said cause, and send the same to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California, as part of the record in this cause, in lieu of copies of the same.

Dated this 17th day of Aug., A. D. 1922.

R. S. BEAN,
District Judge.

Filed August 17, 1922. G. H. Marsh, Clerk.
[178]

Plaintiffs' Exhibit No. 3.

December 6, 1920.

For and in consideration of the United States National Bank of Portland, Oregon, purchasing from the Kelso State Bank, of Kelso, Washington, the following warrants:

| | |
|---|-------------|
| School District County of Cowlitz | \$ 4 491 74 |
| City of Rainier | 5 143 38 |
| Road District No. 1, Cowlitz County . . . | 1 918 01 |
| Drainage District No. 3, Clarke County | 2 408 37 |
| Diking warrants, Cowlitz County | 11 916 47 |

\$25 877 97

The Kelso State Bank hereby agrees to repurchase the said warrants at par on or before ninety days after date, and further agrees that interest at the rate of 7 per cent per annum is to be charged monthly to the account of the Kelso State Bank for the time carried by the United States National Bank of Portland.

[Seal Kelso State Bank]

KELSO STATE BANK,
By GEO. F. PLAMONDON,
Assistant Cashier.

Filed March 30, 1922. G. H. Marsh, Clerk.
[179]

Plaintiffs' Exhibit No. 4.

THE UNITED STATES NATIONAL BANK.

Portland, Oregon, December 8, 1920.

For value received, the Kelso State Bank, of Kelso, Washington, hereby sells to the United States National Bank of Portland, Oregon, the following warrants:

| | |
|--|-------------|
| Cowlitz County Diking Warrants | \$ 6 853 12 |
| Cowlitz County Diking Warrants dis. | |
| #36 | 1 135 00 |

\$ 7 988 12

The Kelso State Bank hereby agrees to repurchase these warrants on or before ninety days, and further agrees that interest at the rate of 7% per annum is to be charged monthly to the account of the Kelso State Bank.

KELSO STATE BANK,
F. C. STEWART,
Cashier.

Filed March 30, 1922. G. H. Marsh, Clerk.
[180]

Plaintiffs' Exhibit No. 5.

KELSO STATE BANK,
Kelso, Washington.

3-14-21.

We today DEBIT your account as follows:

Your re-purchase Agreement #36881-

| | |
|------------------------------------|----------|
| due 3/8-21 | 7 613 62 |
| Interest from 2/8/21 to 3/14 | 50 32 |

7 663 94

THE UNITED STATES NATIONAL
BANK OF PORTLAND, OREGON.

D. O., Accountant.

DUPLICATE.

UNITED STATES NATIONAL BANK.


Portland, Ore., March 14, 1921.


Kelso State Bank,
Kelso, Washington.

We credit your account as follows:

Number or Date of Letter

| Repurchase Agreement. | Amount |
|-----------------------|-----------|
| date 3/6 | 25 877 97 |

 In receiving checks on deposit, payable elsewhere than in Portland, this bank assumes no responsibility for the failure of any of its direct or indirect collecting agents, whether the collecting agent be the person or concern on which the check for collection is drawn or not, and shall only be held liable when proceeds in actual funds or solvent credits shall have come into its possession. Under these conditions items previously credited may be charged back to the depositor's account.

 Checks drawn upon this bank will be credited conditionally and if found not good at close of day's business, will be charged back to depositor's account. In making this deposit the depositor hereby assents to the foregoing conditions.

Form 270.

DUPLICATE.

ORIGINAL

UNITED STATES NATIONAL BANK.


Portland, Ore., March 14, 1921.

Kelso State Bank,


We credit your account as follows:

| | |
|--------------------------|--------|
| Number or Date of Letter | Amount |
| Repurchase Agreement. | |

| | |
|-------------------|----------|
| Date 3/8/21 | 7 713 62 |
|-------------------|----------|

 In receiving checks on deposit, payable elsewhere than in Portland, this bank assumes no responsibility for the failure of any of its direct or indirect collecting agents, whether the collecting agent be the person or concern on which the check for collection is drawn or not, and shall only be held liable when proceeds in actual funds or solvent credits shall have come into its possession.

Under these conditions items previously credited may be charged back to the depositor's account.

 Checks drawn upon this bank will be credited conditionally and if found not good at close of day's business, will be charged back to depositor's account. In making this deposit the depositor hereby assents to the foregoing conditions.

Form 270.

Form 354 88944

Kelso State Bank,

March 14, 1921.

Kelso, Washington.

We today DEBIT your account as follows:

Your re-purchase #36598 due 3/8 25 877 97

Interest to March 14, 1921 191 24

26 067 21

THE UNITED STATES NATIONAL
BANK OF PORTLAND, OREGON.

D. O., Accountant.

BANKS.

3-14-21.

Kelso State Bank, Kelso, Washington.

We today DEBIT your account as follows:

Re-purchase Agreement #36598 due 3/6 25 877 97

“ “ 36881 “ 7 613 62

33 491 59

THE UNITED STATES NATIONAL
BANK OF PORTLAND, OREGON.

D. O.,

Accountant.

Filed March 30, 1922. G. H. Marsh, Clerk.

Plaintiffs' Exhibit No. 6.**KELSO STATE BANK,**

Kelso, Washington.

L. P. Brown, County Treasurer, 1921.

| Old Balance | | Date | Checks | | Date | Deposits | | Date | New Balance | |
|-------------|---------|---------|-----------------------|--|---------|-----------|--|---------|-------------|--|
| | | | Balance brought frwd. | | | | | | | |
| 15 835 34 | Jan. 27 | 16 47— | | | Jan. 25 | 15 835 34 | | Jan. 25 | 15835 34* | |
| 16 216 77 | Jan. 31 | 51' 00— | | | Jan. 27 | 397 90 | | Jan. 27 | 16216 77* | |
| 16 165 77 | Feb. 1 | 6 50— | | | Jan. 31 | | | Jan. 31 | 16165 77* | |
| 16 159 27 | Feb. 5 | 84' 68— | | | Feb. 1 | | | Feb. 1 | 16159 27* | |
| 16 074 59 | Feb. 7 | 1 90— | | | Feb. 5 | | | Feb. 5 | 16074 59* | |
| 16 072 69 | Feb. 8 | 46 50— | | | Feb. 7 | | | Feb. 7 | 16072 69* | |
| 16 026 19 | Feb. 9 | 147 50— | | | Feb. 8 | | | Feb. 8 | 16026 19* | |
| 15 878 69 | Feb. 11 | 47 84— | | | Feb. 9 | | | Feb. 9 | 15878 69* | |
| 15 830 85 | Feb. 15 | 42 00— | | | Feb. 11 | | | Feb. 11 | 15830 85* | |
| 17 242 27 | Feb. 21 | 35 00— | 464 25 | | Feb. 15 | 1 453 42 | | Feb. 15 | 17242 27* | |
| | | | | | Feb. 21 | 1 694 37 | | Feb. 23 | 18436 50* | |

| | | | | | |
|-----------|---------|--------|---------|----|-----------|
| 18 437 39 | Feb. 23 | 89 | Feb. 23 | 21 | 18437 39* |
| 18 436 50 | Feb. 24 | 238 34 | Feb. 24 | 24 | 18198 16* |
| 18 198 16 | Feb. 25 | 62 40— | Feb. 25 | 25 | 18135 76* |
| 18 135 76 | Feb. 26 | 40 00— | Feb. 26 | 26 | 18095 76* |
| 18 095 76 | Feb. 28 | 3 49 | Feb. 28 | 28 | 19802 35* |
| 19 802 35 | Mar. 1 | 7 50 | Mar. 1 | 1 | 19794 85* |
| 19 794 85 | Mar. 2 | 70 | Mar. 2 | 2 | 19794 15* |
| 19 794 15 | Mar. 3 | 125 00 | Mar. 3 | 3 | 21933 21* |
| 21 933 21 | Mar. 5 | 7 50 | Mar. 5 | 5 | 21910 71* |
| 21 910 71 | Mar. 8 | | Mar. 8 | 8 | 22598 44* |
| 22 598 44 | Mar. 9 | | Mar. 9 | 9 | 29170 99* |
| 29 170 99 | Mar. 11 | 14 50 | Mar. 11 | 11 | 29156 49* |
| 29 156 49 | Mar. 14 | 33 10 | Mar. 14 | 14 | 64460 96* |

Filed March 30, 1922. G. H. Marsh, Clerk. [182]

Plaintiffs' Exhibit No. 7.

Deposited with

THE KELSO STATE BANK, KELSO,
WASHINGTON,

For the credit of

L. P. Brown, Treasurer of Cowlitz County,
Kalama, Washington, March 10, 1921.

| Bank Drawn Upon. By Whom Issued. | To Whom Payable. | Amount. |
|------------------------------------|-------------------------------|---------|
| Yourselves unless otherwise noted. | Myself unless otherwise noted | |
| | | 4 31 |
| Mrs. L. S. Dennison | | 57 34 |
| John Gunnari | | 348 10 |
| H. E. Hett | | 78 |
| Masonic Lodge #94 | | 64 00 |
| W. A. Dickenson | | 16 86 |
| Eula Clark Newell | | 2 05 |
| E. D. Ayers | | 9 94 |
| Riley Oyster | | 21 20 |
| Katherine L. Vigel | | 68 26 |
| Lucia Jenkins | | 26 59 |
| Adams & Co. | | 238 44 |

| Bank Drawn Upon. By Whom Issued. | To Whom Payable. | Amount. |
|-----------------------------------|-------------------------|-----------------|
| Yourselves unless | Myself unless | 8 06 |
| otherwise noted. | otherwise noted. | 160 28 |
| do | | 148 58 |
| Beiger Veneer Co. | | 41 92 |
| Joseph A. Schaffer | | 31 06 |
| C. R. Button | | 14 37 |
| Cashier's check | | 21 65 |
| F. L. Stewart | Geo. F. Plamondon | 11 45 |
| C. W. Simmons | R. A. Davis Co. Auditor | 20 45 |
| Mrs. B. M. Atkins | R. A. Davis Auditor | 18 65 |
| J. W. Beiger | R. A. Davis | 10 25 |
| Chas. A. Peters | R. A. Davis, Auditor | 54 20 |
| do | Co. Auditor | 12 05 |
| G. J. Poysky | R. A. Davis Co. Auditor | 15 05 |
| Joseph A. Schaffer | R. A. Davis | 10 25 |
| Amelia Anderson | County Auditor | 5136 41 |
| San Francisco 11-21 Ida C. Oxtoby | | |
| | | <hr/> \$6572 55 |

Copy—Deposit slip Kelso State Bank, Kelso, Washington, March 10, 1921.
 Filed March 30, 1922. G. H. Marsh. [183]

Deposited with

THE KELSO STATE BANK, KELSO,
WASHINGTON,

For the credit of

L. P. Brown, Treasurer of Cowlitz County,
Kalama, Washington, March 14, 1921.

By Whom Issued.

To Whom Payable.

Myself unless otherwise noted

Bank Drawn Upon.
Yourselves unless
otherwise noted.

John Gunnari
Eva Talbot
Al Secor
C. A. Pauley
F. Oswald
F. E. Day
Geo. W. Shult
Harry Jaques
Oliver Byerly
G. A. Poland
Geo. Smith
Isaac Martin
H. Meier

Amount.
405 81'
144 33
49 97
18 25
46 26
10 51
22 68
39 61
64 78
6 72
23 29
48 38
39 32
10 90

A W Fleetwood

| | |
|-----------------------------------|-----------------|
| do | 76 41 |
| Geo. Foster | 13 44 |
| Mrs. M. A. McKinnon | 120 00 |
| Joseph Somatis | 158 48 |
| R. H. Carlon | 164 01 |
| J. L. Barr | 12 05 |
| G. E. Johnson | 12 05 |
| Chas A. Peters | 33 10 |
| E. J. Master | 69 97 |
| do | 147 79 |
| Coweeman Driving & Rafting Co. | 359 57 |
| do | 69 36 |
| Clark Creek Log Co. | 77 99 |
| Vogue Amusement Co. | 174 66 |
| C. W. McFarland | 20 42 |
| Puget Mill Co. | 32 897 97 |
| Pope & Talbot San Francisco | <hr/> 35 337 57 |

Copy—Deposit slip Kelso State Bank, Kelso, Washington, March 14, 1921.
 Filed March 30, 1922. G. H. Marsh, Clerk. [184]

Plaintiffs' Exhibit No. 9.

COPY.

December 15, 1919.

Mr. F. L. Stewart, Cashier,
Kelso State Bank,
Kelso, Washington.

Dear Sir:

The examination made of the affairs of your bank at the close of the business November 19th by Mr. Claude P. Hay did not show the improvement in your condition expected.

The abuse of your cash item account cannot be too severely criticised. Overdraft checks and items representing insurance premiums remitted for, but not collected are entirely improper in this account. You have been in the banking business long enough to fully understand why such is the case. In reporting such items to this office in your call reports constitutes making a false statement for which you could be prosecuted.

In answer to a letter of inquiry the United States National Bank of Portland reports to us that it holds \$21 600 00 in liberty bonds under a re-purchase agreement executed by this bank. By your failure to carry these bonds on your books and report them as re-discounted with the U. S. National Bank you have violated the law. In the past you have been guilty of this same violation of law and each time the matter was called to your attention. Will you furnish me with some reasonable excuse of why you should not be prosecuted for your fail-

ure to show the liability of your bank under this repurchase agreement.

On March 18, 1920, you have carried the property described as "120 acres Josephine County, Oregon, book value \$3 563 36" in your other real estate account for the five year period allowed by law. On that date you will charge this property off your books if you have not disposed of it in the meantime. [185]

This office has been exceedingly lenient with you in the past permitting you to carry a number of objectionable loans on your promise that they would be collected if you were given a reasonable time. At the last examination made of your bank you assured the Examiner that you were placing a bond issue upon certain timber lands owned by you in the amount of approximately \$50 000 00. According to your statement at that time arrangements were practically completed for the issue and sale of these bonds and it was understood that you were to use the proceeds to eliminate loans carried by your bank to which objections have been made for the last several years by this office. Sufficient time has expired for this program to have been carried out but nothing seems to have been done. Our patience with you has now reached its limit and we propose that the affairs of your bank be adjusted in accordance with the recommendations of this department. You are therefore instructed to collect the following loans on or before March 15, 1920:

| | |
|----------------------------------|------------|
| Corvallis Sand & Gravel Co. | \$7 650 00 |
| J. W. Alexander | 4 460 00 |
| Cowlitz Bridge Co. | 10 000 00 |
| J. H. Gallagher | 6 000 00 |
| M. E. Cue overdraft | 395 31 |
| M. E. Cue | 4 500 00 |
| Hub Printing Co. | 9 000 00 |
| John L. Harris | 3 000 00 |
| John L. Harris | 7 800 00 |
| Independent Navigation Co. | 7 500 00 |
| A. E. Johnson | 4 000 00 |
| Max Johnsen | 16 564 50 |
| N. W. Transportation Co. | 15 000 00 |
| W. T. Slattery et al | 1 622 50 |
| A. J. Wallace | 4 197 39 |
| A. J. Moser | 4 197 39 |
| Triumph Machinery Co. | 500 00 |

You are also instructed to discontinue making any loans to these parties in the future.

In addition to the items listed under schedule "A" on sheet 11 you will charge off immediately the acceptances drawn [186] by the Triumph Machinery Company amounting to \$1,729.47, all of which are past due at the time of the examination and discontinue purchasing any more acceptances of that company.

You will report full compliance with the above instructions to this office on or before March 20, 1920. Your failure to report such compliance will result in the necessary action being taken by this department to place the affairs of your bank in proper condition.

In going over correspondence had with you in the past after examinations made of your bank I find that you have practically ignored the instructions of this department. On February 7, 1919, a letter was addressed to you requiring that certain adjustments be made and instructing you to submit that letter to your board of directors and for them to reply over their own signatures to this department by May 1st that they had read the letter, and also have them report in detail the proper adjustments of each item mentioned. We received from you a copy of the minutes of the meeting of the board of directors of your bank on May 26th signed by the individual members of your board. These minutes merely mentioned that a letter of the Bank Examiner was read and go on to compliment the management of your bank and the condition of your bank in no uncertain terms. This document did in no way comply with my request. You are now instructed to present this letter to your board of directors and have them acknowledge to me over their own signatures that they have read it.

Yours very truly,

Bank Commissioner.

LHM:HS.

Filed March 30, 1922. G. H. Marsh, Clerk.
[187]

Plaintiffs' Exhibit No. 10.

Examiner's Summary of Condition—Continued.

General Remarks:

Examiner should give a complete summary of all matters to which special attention be called, giving each subject a separate paragraph. This summary should include any matters referred to under head of Miscellaneous Information, to which attention should be called.

Reserved 17.7 O. K.

LOANS.

As per list below, the following loans are considered very slow, and in many cases very doubtful.

| | |
|------------------------------------|-------------|
| Corvallis Sand & Gravel Co. | \$ 7,500.00 |
| John W. Alexander | 4,110.00 |
| Robt. Bowman | 1,500.00 |
| M. E. Cue | 6,250.00 |
| Hub Printing Co. | 10,000.00 |
| D. B. Carr | 763.00 |
| John L. Harris | 9,600.00 |
| Amelia M. Hull | 216.00 |
| W. F. Holton | 250.00 |
| Max Johnson | 10,689.50 |
| A. E. Johnson | 4,000.00 |
| Fritz Kruse | 5,000.00 |
| Mark Lane | 177.25 |
| A. J. Moser | 4,368.00 |
| Triumph Mach. Co. | 1,850.00 |
| H. F. Morse | 1,074.50 |
| Morse, R. E. | 1,000.00 |
| N. W. Transportation Company | 4,500.00 |

| | |
|---------------------------------|----------|
| Peters Garage & Machinery | 7,500.00 |
| Secor Brothers | 7,845.00 |
| L. Stock | 250.00 |
| Frank Shepard | 9,589.40 |
| W. C. Slattery | 3,370.50 |
| J. H. Gallagher | 6,000.00 |
| A. G. Wallace | 4,368.00 |
| Lula B. Wells | 2,270.00 |

In other words, \$114,041.15 of this Bank's loans (total loans \$362,406.41) are subject to very severe criticism. Examiner does not feel that it is necessary to take up each loan on sheet ten and supply additional information, as the loans are fairly well covered on sheet six. In connection with these loans, will say however that a large per cent of the ones listed above have been in this bank for a large number of years, and all that this bank is doing to collect is to renew, **AND ADD THE INTEREST IN**, each year. On several of these loans, examiner would say that no real money has been received (if so it was borrowed from this bank) on these loans since they were made. While no doubt in some cases the notes are in better shape than at last examination, [188] on the other hand some of the most doubtful ones have been materially increased. Attention is called to the examination just previous to this one, and also to the correspondence on file (same is returned herewith) by referring to a letter from this department dated December 15, 1919, we find that at that time the department felt that it was time to collect some of these loans that had been running since the bank

started (so to speak) and Stewart was instructed to collect, AND to discontinue making loans to these parties. From all information examiner was able to obtain it seems as if instructions from this department are a mere detail, and that Stewart does as he pleases. He controls the bank from President on down, and the directors of this bank are mere figure heads. Examiner requested that the Directors be called in, at a meeting to be held at one thirty on Saturday, (examiner notified the Deputy Bank Commissioner, and he came down) but two of the directors were out of town, one director only showed up at the meeting besides Mr. Stewart. Examiner noticed that Stewart seemed very anxious to avoid having the other directors there, and seemed to be glad to get rid of the Examiners and Deputy Commissioner.

Cashier dominates the board of directors, and makes all the loans for this bank himself. Examiner frankly believes him to be crooked, although all accounts seem to balance except the loans which are \$111.00 off. Examiner would have demanded the cashier's resignation but for the fact that it would be a very serious thing to do at these critical times. No doubt a forced resignation would cause a run on the bank, and frankly, this bank can't stand a run now. While this bank might be able to liquidate in the course of human events, it could not do so very fast with \$114,000.00 of doubtful and slow paper.

Examiner feels that Cashier has in the past, if not at present, been given valuable consideration

for making [189] these loans, and for extending them as he has done. Attention is called to the numerous renewals of old stuff where the due date is in the far distant. Cashier seems very well pleased with himself in fact better pleased with himself than examiners were of him. He seems to be kidding himself along and trying make believe that some of these loans are all O. K. and that all he has to do is to renew them when they get a little stale, add the interest in, and consider it a new loan. Examiners feel that a loss equal to at least the amount of the Surplus & Undivided Profits will be the result of these loans.

Examiners called the Deputy Commissioner down to see for himself the lay of the ground, and also to have its effect on the Cashier, because the time has come to call Stewart's hand and see who has the best cards. Personally Examiners feel that the guarantee executed by Stewart is not worth anything, as it would be as hard for him to dig up \$50,000 at this time as it would a lot of other people who claim to have less. Note also that the guarantee covers the notes in the Bank at the time the guarantee was given, but of course does not cover the renewals. This may be one of the large reasons why so much of this old doubtful paper has been renewed.

Loans listed on sheets

5 & 6\$276,163.86

Loans not listed 86,242.55 \$362,406.41

Examiner did not put very much under "B" or "C" nor all that should perhaps go under "A."

Nor was sheet twelve filled as it should be, due to the fact that Deputy Commissioner said that that would be handled from the office. In this connection will say that there is ABSOLUTELY NO USE IN TELLING STEWART ANYTHING UNLESS NECESSARY FORCE IS USED IN BACKING IT UP. Note that in the correspondence he has been warned from time to time, and threatened as to taking charge of his bank by this department but to no avail, he handles it as he wants to, and the rest can [190] be D—— for all he cares. Examiner would not like to have department tell Stewart a thing unless it will go the limit in forcing compliance with it, and at once too. Stewart thinks that Mr. Hay is (or at least says Mr. Hay is) very well pleased with the progress that this bank is making in cleaning up this old stuff. Examiner would just give most anything to have had Mr. Hay on the job and pointed out the weak spots in this man's line of chatter, (it would have taken all the time though) but examiner knows that Stewart is stalling, and that Mr. Hay (if he were there) would know that Stewart is one that will bear watching, and that he has paid no attention to law, Department rulings, good business sense, and everything that goes to make a clean, A-class Bank.

Other than the immense list of cash items, the detail work seemed up in fair shape. Mr. Knapp says that he has no particular criticism, other than sheet twelve, on the way the detail is handled.

This bank's force sure try to treat you right and make a favorable impression but the cashier slipped a little when he stated that it was largely through his efforts that Mr. Hay was appointed Commissioner. This line of chatter don't go with this examiner, we looked them over rather carefully after that.

Anything not covered here can be referred to the Deputy Commissioner, or if necessary will be glad to supply any additional information if I have it.

H. S. BENNETT,
Examiner.

Filed March 30, 1922. G. H. Marsh, Clerk.
[191]

Plaintiffs' Exhibit No. 11.

COPY.

February 1, 1921.

Mr. F. L. Stewart, Cashier,
Kelso State Bank,
Kelso, Washington.

Dear Sir:

In looking over the letter to you written by Mr. Minshull on December 13, 1920, relative to the criticisms of your bank by the Examiner following his inspection of November 18, 1920, it would appear to be of advantage to us at this time for you to send us a detailed statement of the action taken by you in regard to each specific requirement contained therein. You will also send us a copy of your daily statement as of January 31, 1921.

Please do not delay giving us this information, as we do not want to incur the expense of sending an Examiner to obtain it if we can avoid doing so.

This office will expect you to make every effort to place your institution in proper condition at an early date, and we wish to impress upon your mind that further delay will not be tolerated.

Yours respectfully,
CLAUDE P. HAY,
Bank Commissioner.

By _____,
Special Deputy Bank Commissioner.

ETW: HS.

Filed March 30, 1922. G. H. Marsh, Clerk. [192]

Plaintiffs' Exhibit No. 12.

March 7, 1921.

Personal.

Mr. F. M. Carothers, President,
Kelso State Bank,
Kelso, Washington.

Dear Sir:

At a conference with Mr. Stewart last evening, we endeavored to impress upon him the desirability of his withdrawing as the managing officer of your bank. He left us with the understanding that he was to work out a plan whereby he would relieve himself of the cashiership. His resignation has not as yet been demanded. We felt that perhaps results could be more easily arrived at to allow him

to suggest a plan that would meet with our approval.

I am writing him today as per the enclosed copy of letter which is self explanatory, and which will inform you and the rest of your Directors of the position which we have taken.

Yours very truly,
DEPUTY BANK COMMISSIONER.

JCM/m.

Enc.

Filed March 30, 1922. G. H. Marsh, Clerk.
[193]

Plaintiffs' Exhibit No. 13.

March 7, 1921.

Mr. F. M. Carothers, President,
Kelso State Bank,
Kelso, Washington.

Dear Sir:

Enclosed herewith find notice for the levying of an assessment of 100% against the capital stock of your bank, which assessment is made in accordance with the agreement had at the conference held in Chehalis between yourself, Mr. George L. Marsh, Mr. Claude P. Hay, Bank Commissioner, and myself, and which was followed by a conference between Mr. Hay, Mr. Fred L. Stewart and myself.

When this assessment is collected you will notify this office at which time a representative from this department will meet with your Board and determine the particular items to be eliminated.

As stated yesterday it is very much to be desired that this assessment be collected as quickly as possible, and without any publicity whatever being given to it. For this reason we believe it advisable that you determine among yourselves which Director should personally see the other stockholders and have the matter presented in such a manner that no embarrassing situations will result. The more quickly and quietly that this can be done the less liability there will be of any injury resulting to your bank.

You are instructed that we shall look to you personally to see that the meeting of your Board of Directors is called and that the necessary steps for the collection of this assessment are taken.

Kindly have your Directors acknowledge receipt of the notice of the assessment over their signatures.

Yours very truly,
DEPUTY BANK COMMISSIONER,
REGISTERED.

JCM/m.

Enc.

Filed March 30, 1922. G. H. Marsh, Clerk.
[194]

Plaintiffs' Exhibit No. 14.

March 7, 1921.

Mr. Fred L. Stewart, Cashier,
Kelso State Bank,
Kelso, Washington.

Dear Sir:

We have to-day given your president, Mr. F. M.

Carothers, formal notice of the necessity for levying an assessment of 100% upon the capital stock of your bank and have instructed him to call a meeting of your Board of Directors and arrange for the collection of same. When this is accomplished, this department is to be notified and a representative from this office will meet with your Board and determine just what assets shall be removed.

As stated to you last night, we have determined that the greatest good to yourself and your bank can be accomplished by some plan which will relieve you of the responsibility of the load which you have been assuming. We will, therefore, ask that you make some definite arrangements whereby the active management of your bank will be placed in the hands of some person other than yourself. Any plan which you submit must meet with the wishes of your board of directors before it would be approved by this Department.

Yours very truly,

DEPUTY BANK COMMISSIONER,

JCM-M.

Filed March 30, 1922. G. H. Marsh, Clerk.

[195]

Plaintiffs' Exhibit No. 15.

STATE OF WASHINGTON,

Banking Department.

Olympia, March 7, 1921.

To the Directors of Kelso State Bank,

Kelso, Washington.

NOTICE.

You are hereby notified that in order to remove

from your assets certain objectionable items, this department finds it necessary to require you to levy an assessment of One Hundred Per Cent (100%) against the capital stock of your bank.

You are, therefore, instructed to call a meeting of your Board of Directors within ten (10) days from the date of this notice, at which meeting you will adopt a resolution for the levying and collection of said assessment; you will immediately serve notice upon each of your stockholders, personally, or by mail at their last known address, to pay such assessment into your bank.

This notice is given you under the provisions of Section 34, Chapter 89 of the Laws of 1917 of the State of Washington.

DEPUTY BANK COMMISSIONER.

Filed March 30, 1922. G. H. Marsh, Clerk.
[196]

Plaintiffs' Exhibit No. 16.

COPY:

October 13, 1921.

Honorable Eliot Wadsworth,

Assistant Secretary of the Treasury,
Washington, D. C.

Dear Sir:

In reply to your letter of the 23d ult., I beg to advise you that 50% of the loss sustained through the failure of this bank would in my judgment be a fair guess at the value of the salvage. The sum mentioned by you of \$3,693.01 would not be in

excess of 10% of the loss sustained by the Fidelity & Deposit Company of Baltimore, however.

We are involved in so much litigation and other uncertainties that no accurate estimate of the value of salvage can be made. Nothing better than a guess can be offered.

Sincerely,

T. H. ADAMS,

Special Deputy Supervisor of Banking, Liquidating
Kelso State Bank.

Filed March 30, 1922. G. H. Marsh, Clerk.
[197]

Plaintiffs' Exhibit No. 17.

COPY.

GUARANTEE.

Kelso, Washington, May 26, 1919.

I hereby guarantee the notes and mortgages held by the Kelso State Bank, both as to principal and interest, up to a sum not to exceed \$50,000.00, according to my proposition made to the Directors of Kelso State Bank at its meeting held in the offices of the Bank on May 26, 1919; this being done for the reason that these notes and mortgages have largely been accepted by the bank on my personal judgment in collecting in and making good old loans carried in former years; it being my judgment that these loans can all be collected in full, with principal and interest, by taking more time.

Signed and dated at Kelso, Washington, this
26th day of May, 1919.

(Signed) F. L. STEWART.

Filed March 30, 1922. G. H. Marsh, Clerk.
[198]

Plaintiffs' Exhibit No. 18.

December 13, 1920.

Mr. F. L. Stewart, Cashier,
Kelso State Bank,
Kelso, Washington.

Dear Sir:

Since the examination of your bank was made by examiners Bennett and Knapp on November 18th, my time has been so completely occupied that I have been unable to give the same proper attention.

In going into the matter more thoroughly than I had an opportunity to do when in your bank I am more than ever convinced that it is absolutely essential that a radical departure from past methods employed in your bank must be made.

When it is considered that you were carrying more than 50 separate items as cash, which could not be considered as such, some of which had been running for more than six months, it is needless to say that the conclusion must follow that there has either been a willful attempt to mislead this department in regard to your proper reserve, or that the persons responsible for this practice are lacking in the knowledge of what is proper conduct for a bank officer. The practice is all the more deplorable in view of the fact that your attention has been called to this in the past.

There are so many items in your loans, the value of which is either very questionable or upon which the information is so inadequate that we cannot intelligently pass upon same, that we believe it is imperative that we issue the following instructions:

Corvallis Sand & Gravel Co. \$7,500.00.

You will collect this item at the rate of not less than \$200.00 per month. Should more than [199] three months delinquency in payments occur at any time, you will immediately start suit to recover or charge off the full amount yet unpaid.

John W. Alexander \$3,110.00. W. C. Slattery

\$3,370.50.

These obligations have been almost doubled since the last examination, although at that time you were instructed to collect same. On the information furnished the examiners the proceeds of these loans have been used for purely speculative purposes. You are instructed that you will collect all of this total obligation within 90 days.

Northwestern Transportation Co. \$4,500.00. Frank

Shepard \$9,589.40.

Your loan to the transportation company was criticised December 15, 1919, and you were instructed to collect same. Your total loan now constitutes excess and you will at once charge off that portion in excess of 20 per cent of your combined capital and surplus. The balance must be col-

lected in full during 1921. Your failure to do so will result in an order to charge off the entire amount.

Max Johnson \$10,689.00.

This department has always strenuously objected to your loans to this party. You now admit a loss of \$6,000.00 which you were ordered to charge off. The balance you will collect or charge off within 90 days.

A. J. Moser.....\$4,368.00

A. G. Wallace..... 4,368.00

Triumph Machinery Co. 1,850.00

The total amount of this loan being an excess you will charge off the excess portion immediately. The balance must be substantially reduced at once. This loan has been consistently increased over a period of three years in spite of the protest of this department.

Secor Brothers \$7,845.00.

This loan shows a net increase of \$435.00 over the last three years. This must be reduced immediately.

A. E. Johnson\$4,000.00

J. H. Gallagher 6,000.00

[200]

Although the financial statements of this company submitted to this department by your bank since 1918 show a continued improvement, you have failed to reduce this within the past year. It must be considered in the nature of a capital loan and its reduction is therefore ordered.

You will collect the following within 90 days:

| | |
|-----------------------------|------------|
| Robert Bowman | \$1,500.00 |
| Castle Rock Logging Co..... | 1,533.04 |
| J. B. Ford..... | 1,350.00 |
| Mark Lane | 177.25 |
| L. Stock | 250.00 |
| Lulu B. Wells, et vir..... | 2,270.00 |
| Clark Studebaker | 2,958.50 |

The following you will charge off at once if not already collected:

| | |
|-----------------------|-----------|
| D. B. Carr | \$ 763.00 |
| Amelia M. Hull..... | 216.00 |
| W. F. Holton | 250.00 |
| Arthur Lee | 25.00 |
| H. F. Morse item..... | 1,309.00 |

\$2,563.80

You will secure and forward to this office statements supporting the following:

Peters Mch. and Garage.

F. Kruse.

Northwestern Transportation Co.

Frank Shepard.

Thompson-Ford Lumber Co.

Clark Studebaker.

J. L. Harris.

You will collect or charge off within 90 days all items due you from the Thompson Ford Lumber Company represented by the assigned invoices, and in the future you will immediately charge off any item of this nature outstanding more than 90 days.

Your total loan of \$12,650.00 to Thompson-Ford

Lumber Co., J. R. Ford, J. R. Thompson and their wives is an excess loan and you will immediately charge off the excess portion.

M. E. Cue, \$6,250.00. Hub Printing Co., \$10,000.00

This is an excess loan, and has been so classified before by this department. You, however, have seen fit to consistently increase [201] this over a period of three years. You will therefore immediately charge off \$6,250.00 of this amount.

Schedule A of Sheet 11, a copy of which was left with you by the examiners, shows a total of items to be charged off of \$11,736.02. Of this amount you stated \$6,000.00 would be assumed by yourself, thus leaving \$5,736.02 to be deducted from your undivided profits and surplus. In addition there is represented in the above letter items to be charged off of \$16,409.20. This will eliminate most of your surplus and will, therefore, reduce your loan limit.

You are instructed that it will be improper for you to pay any dividends until permission has been given by this department.

It will not be satisfactory for you to accept renewals in lieu of payment of any of the above items, and we cannot allow you to substitute notes therefor. The collections must actually be made.

The above instructions have been given only after the most careful consideration of the report of examination and of the events which occurred during the time the writer was in your bank at the time of the examination. I recall your statements with respect to many of the items listed above and be-

lieve that you feel that some of them are too severely criticised. I am frank to say, however, that I am convinced you are misleading yourself, and that before the entire matter is cleaned up your bank will have suffered a severe loss. You will consider the above instructions as definite. You will report to this department not later than December 31, 1920, showing what progress you have made toward complying with these instructions.

You will report again not later than March 15, 1921. Your failure to show proper progress can only result in a special [202] examination being made of your bank in order that we may determine what will be the proper course to pursue toward eliminating the objectionable items.

Please acknowledge receipt of this letter.

Yours very truly,

DEPUTY BANK COMMISSIONER.

J. C. M./HS

Filed March 30, 1922. G. H. Marsh, Clerk. [203]

Plaintiffs' Exhibit No. 19.

(Copy.)

WOODLAND STATE BANK,

Woodland, Wash., March 14, 1921.

Mr. Claude P. Hay,

Bank Commissioner,

Olympia, Washington.

Dear Mr. Hay:

I am enclosing herewith copy of my report on the paper held by Kelso State Bank, copies of which

have been sent to Mr. Stewart, Mr. Carothers and Geo. F. Plamondon. Of course, the opinions shown are not infallible, but I have tried to be conservative as I would in my own business. Mr. Stewart objected strenuously to some of the values arrived at, but I assume he should do so to justify his having the paper in his case.

Nearly all of the paper in his cases can be classified as petrified assets, very little liquid, and the larger part valueless. I cannot see how it can ever be worked out as matters now stand, unless Mr. Stewart is able to pay a large part of his liability in cash and thus reduce the loans to a point justified by the deposits. I calculate Mr. Stewart's liability as follows:

| | |
|---|-------------|
| Notes to bank as maker and endorser | \$20,352.40 |
| Amount necessary to redeem stock now held by First National of Portland as collateral | 14,000.00 |
| 100% assessment on 124 $\frac{2}{3}$ shares | 12,466.67 |
| Special guarantee on notes | 50,000.00 |
| | <hr/> |
| | \$90,819.07 |

It will be absolutely out of the question in my mind for the reorganizers to take that much of Stewart's paper even though it be fully secured, for we shall find ourselves in the same condition as the bank now is, as to reserves, in a very short time, and therefore stiff pressure must be brought to bear on Stewart to get some money and at least reduce his liability to [204] \$50,000.00 of well secured stuff. Should Stewart be able to do

this, then I believe the bank will be solvent, though yet petrified to a somewhat lesser extent (sort of a semi-petrification, may I say) but in a condition that can in the course of a year or two be worked out without loss to depositors or shareholders. At the present time I do not see anything to sell.

Stewart has \$86,000.00 of life insurance policies. There must be a substantial cash surrender value there. He has a large equity in the Alger Timber proposition that should yield something in an early return. Numerous and sundry other properties are owned by him and with his assistance could probably be converted into cash in a reasonable time. His present plan is to go to California and remain permanently at an early date. I think this is a mistake as no one but him can work out the largest part of this mess, and he should be compelled to do it, and, I believe, will willingly do so.

His patrimony will be available some of these times, and it looks to me that he should be required to furnish security with his father and mother for the amount necessary to put the bank in solvent condition. He will dislike to do this, I know, but on the other hand 1,000 depositors will dislike to suffer a loss, and as things now look, there will be a very substantial loss in event no reorganization takes place.

I did not look personally into the contingent liability of the bank for notes and bills sold, said to be sold without recourse but with Stewart's personal endorsement. This matter is vital and should have careful attention. I believe further that Stewart

should be compelled to sign an affidavit setting forth that the signatures on the notes and bills held by the bank are genuine, that the paper has been given for value received, and that there are no legal offsets or claims against the stuff. This will tend to [205] straighten out at least one matter of doubtful legitimacy.

In event Stewart makes good on his liability as above shown, I believe that the paper taken out in lieu of his \$50,000 payment should be retained by the bank as extra security against the stuff retained by the bank, if it could be done.

I have been quite outspoken in this matter so far as this communication is concerned (have personally written this stuff up so that even my stenographer will know nothing of it) and am passing it all along to you for what it is worth. Mr. Carothers, George and I agree on the values and would be willing to take a chance on a new deal on this basis if Stewart can be made to come through with enough funds to liquify part of his stuff. Unless he does so I would not care to assume the years of worry and grief that are bound to follow the present condition.

Respectfully submitted,

L. M. PLAMONDON.

Filed March 30, 1922. G. H. Marsh, Clerk. [206]

Plaintiffs' Exhibit No. 20.

(COPY.)

WOODLAND STATE BANK.

Woodland, Wash., March 14, 1921.

Mr. Claude P. Hay,
Bank Commissioner,
Olympia, Washington.

Dear Sir:

Attached hereto is the report of examination of the notes and bills receivable of the Kelso State Bank after a somewhat hurried examination by F. M. Carothers, Geo. F. Palmondon, F. L. Stewart and myself, Mr. Stewart dissenting for the most part to the value we have placed on the paper.

This list covers only such paper as in my opinion requires shrinkage, and unlisted paper will be acceptable, under the circumstances in a reorganization, assuming that your department will allow reasonable time to work it out.

Yours very truly,

L. M. PLAMONDON.

Filed March 30, 1922. G. H. Marsh, Clerk. [207]

Plaintiffs' Exhibit No. 21.

(COPY.)

KELSO STATE BANK.

Kelso, Wash., March 14, 1921.

Mr. Claude P. Hay,
State Bank Commissioner,
Olympia, Washington.

Dear Mr. Hay:

Mr. Carothers and I have been conferring this evening over the situation here and have decided to call upon you for assistance and advice.

The situation has been fully explained to you in the communication which you have received from L. N. Plamondon, copy of which we have before us. Now the key to the difficulty seems to us to be Mr. Stewart. He apparently has made no effort whatsoever to arrange his part of the solution, except that we believe he is planning to go to California at an early date. He seems to have the idea in his head that we have taken over the burden here, and that we will accept his paper on guarantee for the \$96,000 listed in L. N.'s letter. You can readily see that it would be impossible to do this. Mr. Carothers and I have mutually agreed to ask you to make a trip down, so that you and L. N. Plamondon, Mr. Carothers, Mr. Stewart and myself can have a night conference and thresh the thing out. You could get here on the train that arrives at 8:20 and we could get busy the same night. You can 'phone me or better

yet, 'phone Lou at Woodland and say when. The sooner the better.

Respectfully yours,

GEO. F. PLAMONDON.

Filed March 30, 1922. G. H. Marsh, Clerk. [208]

Plaintiffs' Exhibit No. 22.

(COPY.)

March 15, 1921.

Mr. L. M. Plamondon, President.

Woodland State Bank,

Woodland, Washington.

Dear Sir:

Your three letters of March 14th have been received and contents carefully noted.

I am somewhat surprised at the large amount of questionable paper which you have found in the Kelso State Bank. While I anticipated that there would be a number of items which would not be accepted at the value placed on same by Mr. Stewart, it never occurred to me that there would be so many items upon which a difference of opinion existed. I shall endeavor to give this matter my personal attention in the near future and I am today calling Mr. Carothers on the 'phone and advising him that this department will grant the five additional days for the purpose of collecting the stock assessment. I assume that the directors of the bank will leave no stones unturned in their efforts to bring about a speedy adjustment of matters criticised.

Kindly advise me from time to time how things are progressing, and oblige.

Yours very truly,

Bank Commissioner.

Filed March 30, 1922. G. H. Marsh, Clerk. [209]

Plaintiffs' Exhibit No. 23.

(COPY.)

March 15, 1921.

F. M. Carothers, President,
Kelso State Bank,
Kelso, Washington.

Dear Sir:

I am just in receipt of a letter from Mr. L. M. Plamondon in which he states that it is your desire that this department give you an extension of five days for the purpose of collecting the assessment levied against the stock of your bank. Mr. Plamondon suggested that I telephone you, which I agreed to do. However, on second thought I have decided that it might be better to advise you by letter rather than to take a chance of there being eaves droppers who might overhear our conversation over the wire.

I trust that you will be able to complete the collection of your assessment within the additional time allowed.

Yours very truly,

Bank Commissioner.

Filed March 30, 1922. G. H. Marsh, Clerk. [210]

Plaintiffs' Exhibit No. 24.

THE UNITED STATES NATIONAL BANK.

United States Depository.

Portland, Oregon.

Kelso State Bank,

Kelso, Washington.

Your note in favor of this bank will be due at this bank 3-8-21.

NoteBal. \$7,613.62

Interest 41.44

Total\$7,655.06

No. A36881.

Checks on other banks must be certified.

Please bring this notice with you.

N. B.—Repurchase Agreement. [211]

Plaintiffs' Exhibit No. 25.

Kelso State Bank.

Kelso, Washington, March 7, 1921.

The United States National Bank,

Portland, Oregon.

Gentlemen:

Attention Mr. Dick, Vice-President.

We are returning herewith your notice of 8th inst. maturity of \$7,655.06.

If it is possible we would like to arrange an extension until the 15th or 20th of this month on this item. If this is agreeable to you, please forward us a new re-purchase agreement for, let us say, fifteen days.

Thanking you in advance, we are

Very truly yours,
GEO. F. PLAMONDON,
Asst. Cashier.

GFP-W.

Encl.

Filed March 30, 1922. G. H. Marsh, Clerk. [212]

Plaintiffs' Exhibit No. 26.

March 8, 1921.

Mr. George F. Plamondon, Asst. Cashier.

Kelso State Bank,
Kelso, Washington.

Dear Mr. Plamondon:

Your letter of the 7th instant received, relative to repurchase agreement covering balance of warrants amounting to \$7,613.62, and note that you desire an extension of fifteen days.

We hand you new agreement covering time, as requested.

The writer regretted not being able to see you Saturday. The matter of furnishing you with bonds available for your county funds has been discussed. Under the National Bank Act this is equivalent to a loan and the matter, therefore, would have to be treated as bills payable of your bank. Under recent correspondence with Mr. Stewart our arrangement is that the bank loans will be retired from this source.

We presume that you have given consideration to

the matter of furnishing a surety bond instead of securities.

Yours very truly,

_____,
Vice-President.

ALT:EB. [213]

Plaintiffs' Exhibit No. 28.

THE UNITED STATES NATIONAL BANK.

No. 469.

Portland, Ore., 3-14-21.

Received from Kelso State Bank,

Kelso, Washington.

For safe keeping only and at your risk securities
purporting to be as follows:

Cowlitz County Warrants.....\$33,471.59

Held as security for deposits of county funds-

County Treasurer, Kalama, Wash.

W. P. CHOATE,

Teller.

March 30, 1922. G. H. Marsh, Clerk. [214]

Plaintiffs' Exhibit No. 29.

Kalama, Washington, April 5, 1920.

Board of County Commissioners met in regular session pursuant to adjournment. Present: Albert Maurer, Chairman, E. E. Dale and D. J. Hille, Commissioners. R. A. Davis, Clerk of Board.

In the matter of Depositary Bonds of the following banks, Kalama State Bank and Kelso State Bank, bonds approved and signed by Chairman of Board of County Commissioners.

No further business Board adjourned to meet April 6th at 9 o'clock A. M.

ALBERT MAURER,
Chairman.

Attest: R. A. DAVIS, Clerk of Board. [215]

PLAINTIFFS' EXHIBIT No. 29—Cont'd.

State of Washington,
County of Cowlitz,—ss.

CERTIFICATE OF TRANSCRIPT.

I, R. A. Davis, Auditor of said County, do hereby certify that the foregoing is a true and correct copy of minutes as the same appears in the Commissioners' Journal under date of April 5, 1920, as the same appears of record on page 622 record of Commissioners' Journal volume number 9 of the records of said county.

Witness my hand and official seal, this 25th day of March, A. D. 1922.

(Seal)

R. A. DAVIS,
County Auditor. [216]

PLAINTIFFS' EXHIBIT No. 29—Cont'd.

Kalama, Washington, March 9, 1921.

Board of County Commissioners met in regular session pursuant to adjournment—Present: Albert Maurer, Chairman, J. C. Ferguson and P. A. Parker, Commissioners; R. A. Davis, Clerk of Board.

In the matter of Depositary Bond of Kelso State Bank with Fidelity and Deposit Company of Maryland, presented by County Treasurer, L. P. Brown,

on motion of Ferguson-Parker same was approved and signed.

No further business, on motion Parker-Ferguson Board adjourned.

ALBERT MAURER,
Chairman.

Attest: R. A. DAVIS,
Clerk of Board. [217]

PLAINTIFFS' EXHIBIT No. 29—Cont'd.
Form 11 $\frac{1}{2}$.
State of Washington,
County of Cowlitz,—ss.

CERTIFICATE OF TRANSCRIPT.

I, R. A. Davis, Auditor of said County, do hereby certify that the foregoing is a true and correct copy of minutes as the same appear in The Commissioners' Journal, as the same appears of record on page 125 record of Commissioners' Journal volume number 10 of the records of said County.

Witness my hand and official seal this 25th day of March, A. D. 1922.

(Seal Cowlitz County)

R. A. DAVIS,
County Auditor.

By _____,
Deputy. [218]

Bond No. 26355

\$20 000 00

DEPOSITARY BOND
TO THE
TREASURER OF COWLITZ COUNTY.
KELSO STATE BANK.
(Principal)

MARYLAND CASUALTY COMPANY,
(Surety)

KNOW ALL MEN BY THESE PRESENTS:

That we, Kelso State Bank, a banking corporation organized and existing under the laws of the State of Washington and authorized to conduct business
(State of Washington or United States of America)

in the State of Washington, under the laws thereof, having an office and principal place of business at Kelso, Cowlitz County, Washington, as principal
(City)

and MARYLAND CASUALTY COMPANY (Surety Company), a corporation organized and existing under the laws of the State of Maryland, and authorized to conduct business in the State of Washington under the laws thereof, having an office and principal place of business at Tacoma, Pierce
(City)

County, Washington, and there conducting a general surety business, as surety, are held and firmly bound unto LINUS PERRY BROWN, the County Treasurer of Cowlitz County, State of Washington, or his successor or successors, in the just and full sum of TWENTY THOUSAND DOLLARS (\$20-000,00), lawful money of the United States of America, for the payment of which, well and truly to be made, we do hereby bind ourselves, our and

each of our successors and assigns, jointly and severally firmly by these presents

SIGNED, SEALED AND DATED this 15th day of March, 1920.

WHEREAS, the principal in this bond has been designated by the county treasurer of said Cowlitz County, as a depositary for public funds held and required to be kept by him as treasurer, pursuant to Chapter 51 of the Session Laws of 1907 as amended by Chapter 15 of Session Laws of 1909, being Section 5072 et seq., of Remington & Ballinger's Annotated Codes and Statutes of Washington, pursuant to and in conformity with which said laws this bond is made, [219] executed and delivered; and

WHEREAS, the amount of such funds upon deposit and to be deposited with said principal, is subject to withdrawal, increase or decrease as said County Treasurer may determine; and

WHEREAS, said bank has contracted to pay said county interest upon the average daily balance the said principal shall have upon deposit for the month or any fraction thereof next preceding the crediting of such interest, which interest shall be computed and credited to the account of said treasurer, and become thenceforth a part of such deposit;

NOW THEREFORE, the condition of this obligation is such that if said principal shall, at the beginning of each month, render to the said treasurer a statement showing the daily balance of such county moneys held by it during the month next

preceding and the interest thereon and how the same has been credited, and shall well and truly keep all such sums of money so deposited or to be deposited and the interest thereon, subject at all times to the check and order of said treasurer, and shall make prompt and faithful payments thereof on checks drawn by such treasurer to the extent of all moneys upon deposit by such treasurer with said principal and shall promptly and faithfully calculate, credit and pay such treasurer harmless and indemnified for and by reason of making said deposit or deposits then this obligation shall be void; otherwise to be in full force and effect.

THIS BOND IS EXECUTED AND ACCEPTED UNDER THE FOLLOWING AGREEMENTS:

First: The above-named surety shall have the right to terminate its liability hereinunder by serving written notice of its election so to do upon the county treasurer of said county, and thereupon the said surety shall be discharged from any liability hereunder for any default of the said principal occurring after the expiration of thirty days from and after the service of such notice. [220]

Second: The above-named surety shall be liable hereunder for such proportion of the moneys deposited with said principal by the county treasurer of said county, and payment of which is refused by said principal upon demand of the county treasurer of said county as provided in the condition of this bond as the penalty of this bond bears to the total amount of depositary bonds and other securi-

ties for deposits furnished by the above-named principal to the county treasurer of said county; provided, however, that if such other bonds or securities are insufficient for any reason to fully make together, with the aforesaid proportion under this bond, the full amount of principal and interest demanded and refused and interest thereafter accruing to time of actual payment to the county treasurer of said county, or if the surety on any other such bond shall have been adjudged to be or be insolvent then and in that event the surety hereunder shall be liable to the county treasurer of said county to the full amount of loss sustained by reason of such insufficiency.

Third: The total liability of the above mentioned surety hereunder shall not exceed the penalty of this bond.

IN WITNESS WHEREOF, The said principal has caused this instrument to be executed and its corporate seal to be attached by its officers thereunto duly authorized, and the said surety has caused this instrument to be executed and its corporate seal to be attached by its officers thereunto duly authorized, the day and year above written.

KELSO STATE BANK,

(Principal.)

By GEO. N. PLAMONDON,

(Authorized Officer.)

Attest: ELDEN B. DUNHAM,

(As to Principal.)

(Seal) MARYLAND CASUALTY COMPANY,

(Surety.)

By H. T. HANSEN. (Seal)

L. A. WIDELL.

This bond approved this 5th day of April 1920.

ALBERT MAURER,

Chairman.

Chairman of Board of County Commissioners.

LINUS PERRY BROWN,

County Treasurer.

WILLIAM STUART,

Prosecuting Attorney. [221]

Form 11½.

State of Washington,

County of Cowlitz,—ss.

CERTIFICATE OF TRANSCRIPT.

I, R. A. Davis, Auditor of said County, do hereby certify that foregoing is a true and correct copy of

DEPOSITARY BOND.

as the same appears of record of original bonds in hands of County Treasurer.

WITNESS my hand and official seal this 25th day of March, A. D. 1922.

(Seal)

R. A. DAVIS,

County Auditor.

By _____,

Deputy. [222]

Bond No. 26356

\$40 000 00

DEPOSITARY BOND.
TO THE
TREASURER OF COWLITZ COUNTY.
KELSO STATE BANK.

(Principal)

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND (Surety).

KNOW ALL MEN BY THESE PRESENTS:

That we, Kelso State Bank, a banking corporation organized and existing under the laws of the State of Washington and authorized to conduct business in the State of Washington, under the laws thereof, having an office and principal place of business at Kelso, Cowlitz County, Washington, as principal
(City)

and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation organized and
(Surety Company)

existing under the laws of the State of Maryland, and authorized to conduct business in the State of Washington under the laws thereof, having an office and principal place of business at Tacoma, Pierce County, Washington, and there
(City)

conducting a general surety business, as surety, are held and firmly bound unto LINUS PERRY BROWN, the County Treasurer of Cowlitz County, State of Washington, or his successor or successors, in the just and full sum of Forty Thousand and no/100 Dollars (\$40 000 00), lawful money of the United States of America, for the payment of which, well and truly to be made, we do hereby bind ourselves, our and each of our

successors and assigns, jointly and severally firmly by these presents.

SIGNED, SEALED AND DATED this 15th day of March, 1920.

WHEREAS, the principal in this bond has been designated by the county treasurer of said Cow-litz County, as a depository for public funds held and required to be kept by him as treasurer, pursuant to Chapter 51 of the Session Laws of 1907 as amended by Chapter 15 of Session Laws of 1919, being Section 5072 et seq. of Remington & Ballinger's Annotated Codes and Statutes of Washington, pursuant to and in conformity with which said laws this bond is made, [223] executed and delivered; and

WHEREAS, the amount of such funds upon deposit and to be deposited with said principal, is subject to withdrawal, increase or decrease as said County Treasurer may determine; and

WHEREAS, said bank has contracted to pay said county interest upon the average daily balance the said principal shall have upon deposit for the month or any fraction thereof next preceding the crediting of such interest, which interest shall be computed and credited to the account of said treasurer, and become thenceforth a part of such deposit;

NOW THEREFORE, the condition of this obligation is such that if said principal shall, at the beginning of each month, render to the said treasurer a statement showing the daily balance of such county moneys held by it during the month

next preceding and the interest thereon and how the same has been credited, and shall well and truly keep all such sums of money so deposited or to be deposited and the interest thereon, subject at all times to the check and order of said treasurer, and shall make prompt and faithful payments thereof on check drawn by such treasurer to the extent of all moneys upon deposit by such treasurer with said principal and shall promptly and faithfully calculate, credit and pay such interest as aforesaid, and in all respects save and keep said county and said treasurer harmless and indemnified for and by reason of making said deposit or deposits then this obligation shall be void; otherwise to be in full force and effect.

THIS BOND IS EXECUTED AND ACCEPTED UNDER THE FOLLOWING AGREEMENTS:

First: The above-named surety shall have the right to terminate its liability hereinunder by serving written notice of its election so to do upon the county treasurer of said county, and thereupon the said surety shall be discharged from any liability hereunder for any default of the said principal occurring after the expiration of thirty days from and after the service of such notice. [224]

Second: The above-named surety shall be liable hereunder for such proportion of the moneys deposited with said principal by the county treasurer of said county, and payment of which is refused by said principal upon demand of the county treasurer

of said county as provided in the condition of this bond as the penalty of this bond bears to the total amount of depositary bonds and other securities for deposits furnished by the above-named principal to the county treasurer of said county; provided, however, that if such other bonds or securities are insufficient for any reason to fully make together, with the aforesaid proportion under this bond, the full amount of principal and interest demanded and refused and interest thereafter accruing to time of actual payment to the county treasurer of said county, or if the surety on any other such bond shall have been adjudged to be or be insolvent then and in that event the surety hereunder shall be liable to the county treasurer of said county to the full amount of loss sustained by reason of such insufficiency.

Third: The total liability of the above-mentioned surety hereunder shall not exceed the penalty of this bond.

IN WITNESS WHEREOF, The said principal has caused this instrument to be executed and its corporate seal to be attached by its officers thereunto duly authorized, and the said surety has caused this instrument to be executed and its corporate seal to be attached by its officers thereunto duly authorized, the day and year above written.

KELSO STATE BANK,
Principal.

By GEO. F. PLAMONDON,
(Its Assistant Cashier,) .
(Authorized Officer.) |

Attest: ELDEN B. DUNHAM,

(As to Principal.)

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND,

(Surety)

By H. T. HANSEN. (Seal)

L. A. WIDELL.

This bond is approved this 5th day of April, 1920.

ALBERT MAURER,

Chairman of Board of County Commissioners.

LINUS PERRY BROWN,

County Treasurer.

WILLIAM STUART,

Prosecuting Attorney. [225]

State of Washington,

County of Cowlitz,—ss.

CERTIFICATE OF TRANSCRIPT.

I, R. A. Davis, Auditor of said County, do hereby certify that the foregoing is a true and correct copy of

DEPOSITARY BOND

as the same appears of record of original bond in hands of County Treasurer.

WITNESS my hand and official seal this 25th day of March, A. D. 1922.

(Seal)

R. A. DAVIS,
County Auditor.

By _____,
Deputy. [226]

Bond No. 27718.

\$10,000.00

DEPOSITARY BOND
TO THE
TREASURER OF COWLITZ COUNTY.
KELSO STATE BANK.

(Principal.)

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND, (Surety.)

KNOW ALL MEN BY THESE PRESENTS:

That we, Kelso State Bank, a banking corporation organized and existing under the laws of the State of Washington and authorized to conduct business in the state of Washington, under the laws thereof, having an office and principal place of business at Kelso, Cowlitz County, Washington, as principal and

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation organized and existing under the laws of the State of Maryland, and authorized to conduct business in the State of Washington under the laws thereof, having an office and principal place of business at Tacoma, (City)

Pierce County, Washington, and there conducting a general surety business, as surety, are held and firmly bound unto L. P. BROWN, the County Treasurer of Cowlitz County, State of Washington, or his successor or successors, in the just and full sum of TEN THOUSAND & no/100 Dollars (\$10,000.00), lawful money of the United States of America, for the payment of which, well and truly to be made, we do hereby bind ourselves, our and each of our suc-

cessors and assigns, jointly and severally firmly by these presents.

SIGNED, SEALED AND DATED this 7th day of March, 1921.

WHEREAS, the principal in this bond has been designated by the county treasurer of said Cowlitz County, as a depository for public funds held and required to be kept by him as treasurer, pursuant to Chapter 51 of the Session Laws of 1907 as amended by Chapter 15 of Session Laws of 1909, being Section 5072 et seq. of Remington & Ballinger's Annotated Codes and Statutes of Washington, pursuant to and in conformity with which said laws this bond is made, [227] executed and delivered; and

WHEREAS, the amount of such funds upon deposit and to be deposited with said principal, is subject to withdrawal, increase or decrease as said County Treasurer may determine; and

WHEREAS, said bank has contracted to pay said county interest upon the average daily balance the said principal shall have upon deposit for the month or any fraction thereof next preceding the crediting of such interest, which interest shall be computed and credited to the account of said treasurer, and become thenceforth a part of such deposit;

NOW THEREFORE, the condition of this obligation is such that if said principal shall, at the beginning of each month, render to the said treasurer a statement showing the daily balance of such county moneys held by it during the month next preceding and the interest thereon and how the same has been credited, and shall well and truly keep all

such sums of money so deposited or to be deposited and the interest thereon, subject at all times to the check and order of said treasurer, and shall make prompt and faithful payments thereof on checks drawn by such treasurer to the extent of all moneys upon deposit by such treasurer with said principal and shall promptly and faithfully calculate, credit and pay such interest as aforesaid, and in all respects save and keep said county and said treasurer harmless and indemnified for and by reason of making said deposit or deposits then this obligation shall be void; otherwise to be in full force and effect.

THIS BOND IS EXECUTED AND ACCEPTED
UNDER THE FOLLOWING AGREEMENTS:

First: The above named surety shall have the right to terminate its liability hereinunder by serving written notice of its election so to do upon the county treasurer of said county, and thereupon the said surety shall be discharged from any liability hereunder for any default of the said principal occurring after the expiration of thirty days from and after the service of such notice. [228]

Second: The above-named surety shall be liable hereunder for such proportion of the moneys deposited with said principal by the county treasurer of said county, and payment of which is refused by said principal upon demand of the county treasurer of said county as provided in the condition of this bond as the penalty of this bond bears to the total amount of depositary bonds and other securities for deposits furnished by the above-named principal to

the county treasurer of said county; provided, however, that if such other bonds or securities are insufficient for any reason to fully make together, with the aforesaid proportion under this bond, the full amount of principal and interest demanded and refused and interest thereafter accruing to time of actual payment to the county treasurer of said county, or if the surety on any other such bond shall have been adjudged to be or be insolvent then and in that event the surety hereunder shall be liable to the county treasurer of said county to the full amount of loss sustained by reason of such insufficiency.

Third: The total liability of the above mentioned surety hereunder shall not exceed the penalty of this bond.

IN WITNESS WHEREOF, The said principal has caused this instrument to be executed and its corporate seal to be attached by its officers thereunto duly authorized, and the said surety has caused this instrument to be executed and its corporate seal to be attached by its officers thereunto duly authorized, the day and year above written.

KELSO STATE BANK. (Seal)
(Principal.)

By GEO. F. PLAMONDON,
Its Assistant Cashier,
Authorized Officer.

ELDEN B. DUNHAM,
As to Principal.

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND. (Surety.)

I. C. ROWLAND. (Seal)

This bond is approved this 9th day of March, 1921.

ALBERT MAURER,
Chairman of Board of County Commissioners.
L. P. BROWN,
County Treasurer.

WILLIAM STUART,
Prosecuting Attorney. [229]

State of Washington,
County of Cowlitz,—ss.

CERTIFICATE OF TRANSCRIPT.

I, R. A. Davis, Auditor of said County, do hereby certify that the foregoing is a true and correct copy of

DEPOSITARY BOND

as the same appears of record of original bond in hands of County Treasurer.

WITNESS my hand and official seal this 25th day of March, A. D. 1922.

(Seal) R. A. DAVIS,
County Auditor.

By _____,
Deputy.

Filed March 30, 1922. G. H. Marsh, Clerk. [230]

Plaintiffs' Exhibit No. 30.

RELEASE, ASSIGNMENT AND AGREEMENT.

WHEREAS, the FIDELITY & DEPOSIT COMPANY OF MARYLAND, was surety on a depositary bond given to Linus Perry Brown as County Treasurer of Cowlitz County, Washington, by the KELSO STATE BANK, of Kelso, Wash-

ington, for FORTY THOUSAND DOLLARS (\$40,000.00) to secure the payment of deposits made by the said treasurer in said bank, which said bond was dated on or about March 15, 1920, and

WHEREAS the said Kelso State Bank was closed by the State Banking authorities on March 17, 1921, and on that date taken over for liquidation by the banking department of the State of Washington; and

WHEREAS, at the time of the closing of said Kelso State Bank there was on deposit in said bank to the credit of the said County Treasurer, the sum of SIXTY-FOUR THOUSAND FOUR HUNDRED SIXTY & 96/100 (\$64,460.96) DOLLARS, and there was also on said date due the said treasurer by the said bank interest at the rate of 2% on the average daily balance of said bank for the period from March 1, 1921, to said March 17, 1921, which said interest amounted to \$31.53, making the total amount due said County Treasurer of \$64,492.49.

AND WHEREAS, the said FIDELITY & DEPOSIT COMPANY OF MARYLAND is liable under its aforementioned bond for FOUR-SEVENTHS (4/7) of the said sum of \$64,492.49, which said four-sevenths (4/7) amounts to \$36,852.86, together with interest thereon at the rate of 2% per annum from and after the 17th day of March, 1921, the time of the failure of said bank, amounting to \$77.78, and amounting in all to \$36,930.64.

NOW, THEREFORE, in consideration of the said sum of \$36,930.64 paid to me by the said FIDELITY & DEPOSIT COMPANY OF MARY-

LAND receipt whereof is hereby acknowledged, I hereby release, satisfy and discharge any and all liability of the said FIDELITY & DEPOSIT COMPANY OF MARYLAND, on the aforementioned bond of the Kelso State Bank, and I hereby acknowledge receipt in full of the amount which was deposited [231] in said Kelso State Bank, and for which it was liable to me at the time of its failure, and I hereby cancel and release the said bond of the Fidelity & Deposit Company of Maryland above referred to.

IN CONSIDERATION OF THE PREMISES I hereby transfer and assign to the said Fidelity & Deposit Company of Maryland my claim and demand as depositor and creditor of the Kelso State Bank for the amount paid by the said Fidelity & Deposit Company of Maryland as above set forth, to-wit: the sum of \$36,852.86, and I authorize and empower the Fidelity & Deposit Company of Maryland to make claim against the Kelso State Bank or its legal representative therefor.

WITNESS my signature at Kalama, Washington, this 25th day of April, 1921.

LINUS PERRY BROWN,
County Treasurer of Cowlitz County, Washington.
[232]

RELEASE, ASSIGNMENT AND AGREEMENT.

WHEREAS, the FIDELITY & DEPOSIT COMPANY OF MARYLAND was surety on a depository bond given to Linus Perry Brown as County Treasurer of Cowlitz County, Washington, by the KELSO STATE BANK, of Kelso, Washington, for

TEN THOUSAND DOLLARS (\$10,000.00), to secure the payment of deposits made by the said treasurer in said bank, which said bond was dated on or about March 7, 1921, and

WHEREAS the said Kelso State Bank was closed by the State Banking authorities on March 17, 1921, and on that date taken over for liquidation by the banking department of the State of Washington; and

WHEREAS, at the time of the closing of said Kelso State Bank there was on deposit in said bank to the credit of the said County Treasurer, the sum of SIXTY-FOUR THOUSAND FOUR HUNDRED SIXTY & 96/100 (\$64,460.96) DOLLARS, and there was also on said date due the said treasurer by the said bank interest at the rate of 2% on the average daily balance of said bank for the period from March 1, 1921, to said March 17, 1921, which said interest amounted to \$31.53, making the total amount due said County Treasurer of \$64,492.49.

AND WHEREAS, the said FIDELITY & DEPOSIT COMPANY OF MARYLAND is liable under its aforementioned bond for one-seventh (1/7) of the said sum of \$64,492.49, which said one-seventh (1/7) amounts to \$9,213.20, together with interest thereon at the rate of 2% per annum from and after the 17th day of March, 1921, the time of the failure of said bank, amounting to \$19.45, and amounting in all to \$9,232.65.

NOW, THEREFORE, in consideration of the said sum of \$9,232.65, paid to me by the said Fidelity & Deposit Company of Maryland, receipt

whereof is hereby acknowledged, I hereby release satisfy and discharge any and all liability of the said Fidelity & Deposit Company of Maryland on the aforementioned bond of the Kelso State Bank, and I hereby acknowledge receipt in full of the amount which was deposited [233] in said Kelso State Bank, and for which it was liable to me at the time of its failure, and I hereby cancel and release the said bond of the Fidelity & Deposit Company of Maryland above referred to.

IN CONSIDERATION OF THE PREMISES I hereby transfer and assign to the said Fidelity & Deposit Company of Maryland my claim and demand as depositor and creditor of the Kelso State Bank for the amount paid by the said Fidelity & Deposit Company of Maryland as above set forth, to-wit: the sum of \$9,213.20, and I authorize and empower the Fidelity & Deposit Company of Maryland to make claim against the Kelso State Bank or its legal representative therefor.

WITNESS my signature at Kalama, Washington, this 25th day of April, 1921.

LINUS PERRY BROWN,
County Treasurer of Cowlitz County, Washington.
[234]

RELEASE, ASSIGNMENT AND AGREEMENT.

WHEREAS, the MARYLAND CASUALTY COMPANY was surety on a depository bond given to Linus Perry Brown as County Treasurer of Cowlitz County, Washington, by the KELSO STATE BANK, of Kelso, Washington, for TWENTY THOUSAND DOLLARS (\$20,000.00),

to secure the payment of deposits made by the said treasurer in said bank, which said bond was dated on or about March 15, 1920, and

WHEREAS the said Kelso State Bank was closed by the State Banking authorities on March 17, 1921, and on that date taken over for liquidation by the banking department of the State of Washington; and

WHEREAS, at the time of the closing of said Kelso State Bank there was on deposit in said bank to the credit of the said County treasurer, the sum of SIXTY-FOUR THOUSAND FOUR HUNDRED SIXTY & $96/100$ (\$64,460.96) DOLLARS, and there was also on said date due the said treasurer by the said bank interest at the rate of 2% on the average daily balance of said bank for the period from March 1, 1921, to said March 17, 1921, which said interest amounted to \$31.53, making the total amount due said County Treasurer of \$64,492.49.

AND WHEREAS, the said MARYLAND CASUALTY COMPANY is liable under its aforementioned bond for two-sevenths ($2/7$) of the said sum of \$64,492.49, which said two-sevenths ($2/7$) amounts to \$18,426.43, together with interest thereon at the rate of 2% per annum from and after the 17th day of March, 1921, the time of the failure of said bank, amounting to \$38.89, and amounting in all to \$18,465.32.

NOW, THEREFORE, in consideration of the said sum of \$18,465.32 paid to me by the said MARYLAND CASUALTY COMPANY, receipt

whereof is hereby acknowledged, I hereby release, satisfy and discharge any and all liability of the said MARYLAND CASUALTY COMPANY on the aforementioned bond of the Kelso State Bank, and I hereby acknowledge receipt in full of the amount which was deposited [235] in said Kelso State Bank, and for which it was liable to me at the time of its failure, and I hereby cancel and release the said bond of the MARYLAND CASUALTY COMPANY above referred to.

IN CONSIDERATION OF THE PREMISES I hereby transfer and assign to the said Maryland Casualty Company my claim and demand as depositor and creditor of the Kelso State Bank for the amount paid by the said Maryland Casualty Company as above set forth, to-wit: the sum of \$18,426.43, and I authorize and empower the Maryland Casualty Company to make claim against the Kelso State Bank or its legal representative therefor.

WITNESS my signature at Kalama, Washington, this 25th day of April, 1921.

LINUS PERRY BROWN,
County Treasurer of Cowlitz County, Washington.

Filed March 30, 1922. G. H. Marsh, Clerk. [236]

Plaintiffs' Exhibit No. 31.

COPY.

THE UNITED STATES NATIONAL BANK.

Portland, Oregon, 3/14/21.

No. 1469.

Received from Kelso State Bank.

Address: Kelso, Washington,

For safekeeping only and at your risk securities
purporting to be as follows:

Cowlitz County Warrants33 491 59

NOT NEGOTIABLE

Held as security for deposits of county funds—
County Treas. Kalama, Washington.

(Rubber Stamp) PAUL S. DICK,

Cashier—Prest.

(Signed) W. R. CHOATE,

Teller. [237]

WARRANTS.

Cowiltz County, Wash- School Warrants, Dist.
 ington. Diking Dis- #36
 trict #1. *

| | | | |
|--------|-------|--------------------|-------|
| 2.55 | 10 23 | 30 00 | 23 59 |
| 1 35 | 10 24 | 40 00 | 23 58 |
| 3 00 | 10 01 | 15 00 | 23 46 |
| 8 70 | 10 22 | 500 00 | 23 67 |
| 2 40 | 10 20 | 50 00 | 23 68 |
| 299 95 | 10 35 | 500 00 | 23 65 |
| 500 00 | 10 34 | | |
| 198 53 | 10 36 | 1 135 00* | |
| 3 10 | 10 14 | | |
| 6 00 | 9 98 | | |
| 3 75 | 10 35 | Diking District #8 | |
| 9 20 | 10 42 | | |

1 038 53*

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| | | | |
|--------------------|-------|-------|------|
| Diking Dist. #2 | | 37 49 | 2 03 |
| | | 20 60 | 2 07 |
| | | 17 50 | 2 21 |
| 144 50* | 4 30* | 67 50 | 2 29 |
| | | 18 00 | 2 35 |
| Diking District #4 | | 25 90 | 2 34 |
| | | 7 20 | 2 41 |
| | | 7 98 | 2 39 |
| 500 00 | 9 74 | 5 98 | 2 38 |
| 500 00 | 9 75 | 7 75 | 2 36 |
| 500 00 | 9 73 | 8 97 | 2 32 |
| 500 00 | 9 72 | 8 50 | 2 28 |
| 500 00 | 9 76 | 7 84 | 2 04 |
| 168 00 | 9 89 | 3 12 | 2 05 |
| 17 00 | 10 38 | 3 25 | 2 06 |

| Diking District #4— Continued. | | Diking District #8— Continued. | |
|-----------------------------------|-------|-----------------------------------|------|
| 7 35 | 10 47 | 3 80 | 2 14 |
| 54 84 | 10 26 | 1 10 | 2 22 |
| 12 75 | 10 39 | 31 | 2 23 |
| 8 50 | 10 40 | 9 05 | 2 26 |
| 57 59 | 10 63 | 13 50 | 2 49 |
| 323 34 | 10 45 | 39 50 | 2 50 |
| 372 00 | 10 24 | 46 70 | 2 51 |
| 76 84 | 10 27 | 101 95 | 2 52 |
| 500 00 | 10 22 | 76 35 | 2 53 |
| 20 50 | 10 21 | | |
| 98 09 | 10 17 | 539 84* | |
| 60 34 | 10 34 | | |
| 60 34 | 10 32 | | |
| 22 00 | 10 36 | Diking Dist. #9. | |
| 60 34 | 10 29 | | |
| 20 95 | 10 55 | * | |
| 19 00 | 10 54 | 2 44 | 1 |
| 87 76 | 10 56 | 7 00 | 5 |
| 52 11 | 10 53 | 3 50 | 6 |
| 30 17 | 10 52 | 10 48 | 11 |
| 16 00 | 10 51 | 3 33 | 19 |
| 43 88 | 10 50 | 9 93 | 16 |
| 43 88 | 10 48 | 36 68* | |
| 47 88 | 10 49 | | |
| 18 15 | 10 42 | Diking Dist. #10. | |
| 159 28 | 10 41 | * | |
| 85 02 | 10 64 | 23 20 | 2 85 |
| 119 64 | 10 59 | 51 80 | 2 87 |
| 13 00 | 10 58 | 24 34 | 2 69 |
| 2 74 | 10 57 | 4 99 | 2 63 |

266 *Fidelity & Deposit Co. of Maryland et al.*

| Diking District #4— | | Cowlitz Co., Wash. | |
|---------------------|-------|--------------------|------|
| Continued. | | Continued. | |
| 2 25 | 10 23 | 9 36 | 2 73 |
| 60 34 | 10 30 | 19 34 | 2 65 |
| 11 62 | 10 16 | 500 00 | 1 15 |
| 5 01 | 9 82 | 500 00 | 1 16 |
| 2 50 | 9 88 | 500 00 | 1 17 |
| 10 26 | 9 90 | 500 00 | 1 18 |
| 3 00 | 9 91 | | |

[238]

| Diking District #4— | | Diking District #10 | |
|---------------------|-------|---------------------|--|
| Cont'ed. | | cont'ed. | |
| 10 75 | 9 98 | 2 133 03* | |
| 8 35 | 10 06 | | |
| 2 25 | 10 12 | | |
| 5 295 59* | | | |

Diking District #6

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| | |
|--------|------|
| 3 00 | 5 27 |
| 8 23 | 5 26 |
| 111 76 | 5 19 |
| 65 83 | 5 20 |
| 218 91 | 5 17 |
| 95 76 | 5 28 |
| 46 62 | 5 18 |
| 19 00 | 5 21 |
| 60 00 | 5 16 |
| 2 74 | 5 29 |
| 41 14 | 5 24 |
| 84 74 | 5 22 |
| 11 97 | 5 09 |
| 3 10 | 5 04 |

Diking District #6—
Continued.

| | |
|-------|------|
| 4 00 | 5 14 |
| 11 97 | 5 12 |
| 10 97 | 5 10 |
| 1 99 | 5 02 |
| 9 97 | 5 08 |
| 6 99 | 5 15 |
| 29 96 | 4 43 |
| 17 97 | 4 07 |
| 39 94 | 4 05 |
| 39 94 | 4 04 |
| 10 98 | 4 03 |
| 68 92 | 4 02 |
| 19 97 | 4 01 |
| 22 70 | 4 23 |
| 11 25 | 4 22 |
| 19 50 | 4 21 |
| 16 75 | 4 17 |
| 19 97 | 4 38 |
| 29 96 | 4 39 |
| 88 28 | 4 15 |
| 13 73 | 4 37 |
| 38 95 | 4 36 |
| 37 45 | 4 35 |
| 27 46 | 4 34 |
| 38 45 | 4 32 |
| 38 45 | 4 31 |
| 32 95 | 4 47 |
| 22 47 | 4 46 |
| 73 64 | 4 45 |
| 23 97 | 4 44 |

Diking District #6—
Continued.

| | | | |
|--------|------|----------------------|------|
| 32 45 | 4 42 | | |
| 34 95 | 4 41 | | |
| 47 94 | 4 69 | | |
| 37 50 | 4 57 | | |
| 117 32 | 4 76 | Diking Dist. #6 con- | |
| 60 42 | 4 68 | t'ed. | |
| 27 47 | 4 65 | 17 98 | 2 81 |
| 140 82 | 4 79 | 30 00 | 2 44 |
| 171 31 | 4 77 | 15 75 | 2 45 |
| 24 72 | 4 61 | 11 90 | 2 48 |
| 147 38 | 4 53 | 49 92 | 2 50 |
| 16 60 | 4 56 | 39 94 | 2 52 |
| 24 97 | 4 66 | 9 99 | 2 55 |
| 24 50 | 1 95 | 16 92 | 2 60 |
| 62 95 | 1 94 | 23 95 | 2 27 |
| 15 98 | 2 80 | 31 46 | 2 29 |
| | | 35 23 | 2 30 |

[239]

| | | | |
|-------|------|------|------|
| 19 96 | 2 33 | 5 00 | 3 96 |
| 32 55 | 2 19 | 5 50 | 4 00 |
| 11 55 | 2 67 | 2 00 | 4 13 |
| 67 40 | 3 39 | 8 00 | 4 24 |
| 35 95 | 3 40 | 4 99 | 4 28 |
| 47 95 | 3 41 | 3 00 | 4 29 |
| 79 88 | 3 42 | 7 49 | 4 40 |
| 53 90 | 3 43 | 5 49 | 4 63 |
| 59 91 | 3 44 | 5 49 | 4 64 |
| 36 20 | 3 45 | 5 99 | 4 70 |
| 26 20 | 3 46 | 5 99 | 2 32 |
| 39 96 | 3 47 | 8 52 | 4 83 |

| Diking District #6— Continued. | | Diking District #6— Continued. | |
|-----------------------------------|------|-----------------------------------|-------|
| 24 96 | 3 48 | 9 00 | 4 96 |
| 64 90 | 3 49 | 5 99 | 4 97 |
| 27 46 | 3 50 | 4 99 | 4 98 |
| 19 97 | 3 51 | 6 00 | 4 99 |
| 39 95 | 3 52 | 4 99 | 2 12 |
| 22 48 | 3 53 | | |
| 30 62 | 3 07 | 5200 40* | |
| 25 12 | 3 08 | | |
| 20 00 | 3 13 | | |
| 32 05 | 3 14 | | |
| 39 52 | 3 16 | | |
| 263 90 | 3 17 | Diking District #1. | |
| 41 20 | 3 18 | * | |
| 95 82 | 3 20 | 35 00 | 9 99 |
| 25 95 | 3 24 | 19 26 | 10 11 |
| 29 95 | 3 28 | 14 46 | 10 09 |
| 54 92 | 3 30 | 43 82 | 10 08 |
| 37 50 | 3 06 | 67 53 | 10 07 |
| 9 98 | 2 96 | 12 86 | 10 05 |
| 73 90 | 3 04 | 57 73 | 10 04 |
| 13 97 | 2 92 | 60 00 | 10 27 |
| 42 44 | 3 38 | 184 60 | 10 43 |
| 65 92 | 3 37 | 74 | 10 46 |
| 47 17 | 3 36 | 11 25 | 10 77 |
| 55 95 | 3 35 | 2 50 | 10 76 |
| 39 96 | 3 34 | 120 10 | 10 80 |
| 17 48 | 3 33 | 51 00 | 10 81 |
| 22 47 | 3 95 | 15 21 | 10 78 |
| 29 96 | 3 94 | 52 50 | 10 79 |
| 14 98 | 3 93 | 62 50 | 10 29 |

| Diking District #1.— Continued. | | Diking District #6— Continued. | |
|------------------------------------|------|-----------------------------------|-------|
| 24 98 | 392 | 144 50 | 4 34 |
| 43 92 | 3 82 | | |
| 47 00 | 3 79 | 955 56* | |
| 12 85 | 3 65 | | |
| 19 98 | 3 61 | | |
| 22 48 | 3 62 | | |
| 49 43 | 3 97 | Diking District #6. | |
| 9 98 | 3 98 | | |
| 23 97 | 3 99 | 95 76* | 5 23 |
| 10 98 | 4 11 | | |
| 7 10 | 5 01 | | |
| 11 75 | 2 20 | | |
| 2 50 | 1 98 | Diking District #2. | |
| 3 80 | 1 99 | 152 05* | 4 35 |
| 1 50 | 1 97 | | |
| 1 50 | 2 42 | | |
| 1 40 | 2 39 | Diking District #4. | |
| 7 99 | 2 56 | | |
| 8 00 | 2 61 | * | |
| 5 99 | 2 53 | 22 30 | 11 12 |
| 5 26 | 2 62 | 218 91 | 11 11 |
| 7 99 | 2 90 | 19 57 | 9 78 |
| 7 98 | 2 86 | 13 00 | 9 77 |
| 2 00 | 2 95 | 30 63 | 10 07 |
| 1 25 | 3 05 | 24 68 | 10 03 |
| 3 00 | 3 15 | 13 17 | 9 97 |
| 5 99 | 3 21 | 16 50 | 9 93 |
| 4 99 | 3 32 | 14 12 | 9 92 |
| 1 99 | 3 60 | 121 20 | 10 92 |
| 9 98 | 3 59 | 94 63 | 11 04 |

| Diking District #6— | Diking District #6— |
|---------------------|---------------------|
| 3 99 | 3 57 |
| 7 99 | 3 56 |
| 7 98 | 3 54 |
| | 2 74 |
| | 47 95 |
| | 430 63 |
| | 10 98 |
| | 10 72 |
| | 10 73 |

[240]

| | |
|--------|-------|
| 86 78 | 10 88 |
| 74 07 | 10 89 |
| 101 28 | 10 91 |
| 38 40 | 10 94 |
| 54 85 | 10 99 |
| 68 56 | 11 00 |
| 28 00 | 11 01 |
| 88 28 | 11 02 |
| 5 99 | 11 07 |
| 31 56 | 11 05 |
| 8 90 | 11 08 |
| 3 25 | 11 09 |
| 10 97 | 10 95 |
| 29 93 | 10 85 |
| 68 57 | 10 86 |
| 25 00 | 10 87 |
| 13 71 | 10 84 |
| 2 01 | 10 75 |
| 112 17 | 10 90 |
| 84 75 | 11 03 |
| 383 50 | 10 80 |
| 158 80 | 10 81 |
| 34 45 | 10 79 |
| 4 25 | 10 78 |
| 9 50 | 10 76 |
| 24 45 | 11 10 |

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Diking District #6—

Diking District #6—

| | |
|-------|-------|
| 5 75 | 10 71 |
| 77 15 | 10 70 |
| 41 90 | 10 97 |
| 60 34 | 10 31 |

2807 15*

City of Rainier War-
rants.

| | |
|--------|------|
| 500 00 | 8 80 |
| 500 00 | 8 79 |
| 500 00 | 8 78 |
| 500 00 | 8 77 |
| 281 83 | 8 95 |
| 500 00 | 8 76 |
| 500 00 | 8 75 |
| 500 00 | 8 74 |
| 500 00 | 8 73 |
| 500 00 | 8 72 |
| 361 55 | 8 94 |

5 143 38*

[241]

Drainage District #3

Clarke Co., Washing-
ton, Warrants.

| | | | |
|--------|------|-------|------|
| 215 00 | 80 | 9 98 | 22 |
| 77 42 | 90 | 21 96 | 16 |
| 6 92 | 87 | 17 00 | 02 |
| 28 85 | 88 | 27 46 | 23 |
| 15 23 | 79 | 43 96 | 17 |
| 17 05 | 94 | 4 98 | 2 26 |
| 518 60 | 1 18 | 19 95 | 2 01 |

Drainage District #3—

Continued.

| | | | |
|--------------------|------|--------------------|-------|
| 150 00 | 1 17 | 42 38 | 2 02 |
| 96 00 | 1 07 | 115 53 | 1 36 |
| 80 00 | 1 01 | 27 20 | 1 37 |
| 811 51 | 1 00 | | |
| 41 37 | 99 | 1 918 01* | |
| 200 00 | 98 | | |
| 118 51 | 1 00 | School District #— | |
| 79 16 | 1 04 | Cowlitz Co., Wash. | |
| 207 70 | 1 05 | | |
| 161 53 | 1 06 | 56 38 | 1 52 |
| 25 00 | 1 09 | 110 00 | 71 |
| 9 00 | 1 10 | 140 00 | 93 |
| 55 77 | 1 14 | 28 20 | 24 85 |
| 15 00 | 1 03 | 6 70 | 24 73 |
| 179 16 | 97 | 5 40 | 24 72 |
| 2 408 37 | | 9 45 | 24 86 |
| | | 43 50 | 24 89 |
| | | 60 00 | 24 68 |
| | | 40 00 | 24 67 |
| | | 150 00 | 24 40 |
| | | 166 66 | 24 39 |
| | | 25 00 | 24 60 |
| Road District # 1, | | 9 60 | 24 24 |
| Cowlitz Co., Wash. | | 21 30 | 24 19 |
| Warrants. | | 46 80 | 24 18 |
| 55 82 | 1 45 | 73 90 | 24 16 |
| 33 89 | 1 44 | 21 00 | 24 14 |
| 164 74 | 1 96 | 35 00 | 24 09 |
| 164 74 | 2 19 | 40 00 | 24 11 |
| 55 82 | 1 39 | 43 75 | 24 61 |

| | | | |
|--------|-------|--------|-------|
| 52 36 | 2 06 | 25 00 | 24 65 |
| 33 89 | 1 43 | 40 00 | 24 69 |
| 45 84 | 1 42 | 26 25 | 24 34 |
| 62 33 | 1 41 | 240 00 | 24 37 |
| 27 91 | 1 54 | 90 00 | 24 66 |
| 87 26 | 1 97 | 115 00 | 24 00 |
| 104 74 | 2 20 | 3 02 | 2 34 |
| 34 91 | 1 53 | 212 00 | 2 37 |
| 10 00 | 1 29 | 5 00 | 2 33 |
| 53 82 | 1 40 | 35 00 | 2 35 |
| 57 88 | 59 | 42 50 | 2 31 |
| 19 96 | 26 | 432 00 | 05 |
| 19 96 | 27 | 110 00 | 10 27 |
| 51 90 | 25 | 135 00 | 3 28 |
| 67 88 | 24 | 151 60 | 4 00 |
| 37 93 | 66 | 5 80 | 4 04 |
| 77 00 | 12 | 115 00 | 4 01 |
| 16 70 | 10 | 7 70 | 4 06 |
| 9 30 | 06 | 37 65 | 11 44 |
| 1 80 | 1 15 | | |
| 15 97 | 65 | | |
| 43 05 | 3 19 | | |
| 15 97 | 29 | | |
| 27 98 | 20 | | |
| 52 42 | 61 | | |
| 19 96 | 62 | | |
| 63 88 | 58 | | |
| [242] | | | |
| 60 00 | 4 03 | | |
| 12 72 | 24 78 | | |

| | |
|-----------|-------|
| 125 00 | 25 11 |
| 40 00 | 25 26 |
| 125 00 | 25 18 |
| 135 00 | 25 07 |
| 25 00 | 25 22 |
| 110 00 | 10 50 |
| 160 00 | 2 09 |
| 77 50 | 2 10 |
| 115 00 | 25 17 |
| 115 00 | 25 13 |
| 11 20 | 1 64 |
| 166 66 | 24 97 |
| 99 50 | 3 89 |
| 90 00 | 25 23 |
| 40 00 | 25 24 |
| 18 00 | 25 28 |
| 5 00 | 25 27 |
| 4 491 74* | |

Recap.

| |
|------------|
| 1 038 53 |
| 144 50 |
| 5 295 59 |
| , 1 135 00 |
| 539 84 |
| 36 68 |
| 2 133 03 |
| 5 196 40 |
| 955 56 |
| 95 76 |
| 152 05 |

2 807 15

5 143 38

2 408 37

4 491 74

31 573 58*

31 573 58

1 918 01

33 491 59*

Filed March 30, 1922. G. H. Marsh, Clerk.
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Plaintiffs' Exhibit No. 32.

KELSO STATE BANK.

Kelso, Washington, November 2, 1921.

Messrs. Grinstead & Laube,

Attorneys, Colman Building,

Seattle, Washington.

Attention Mr. Grinstead.

Gentlemen:

I arrived here Friday evening very weary and by the time I reached home Saturday evening I was ready for the sick bed. I suffered from a severe sick headache until Tuesday afternoon and arrived here at noon to-day, not well, of course, but much improved.

I saw Judge Miller yesterday for about ten minutes. He told me he had had a letter from you as to a meeting and we agreed on Monday at ten o'clock A. M. if that meets your convenience and I think he is to write you. I showed him the copy

of receipt you had suggested and he remarked he saw no particular objection to it. He was on his way to Portland and I could have but a few minutes.

As you will observe I have taken the liberty to rewrite the receipt and if you will pardon the apparent egotism I believe I improved it or at least made it express more concisely the manner of tender and acceptance. I am tendering the checks as authorized by the court in my dividend order; you accept them as such if the courts hold that is all you are entitled to but with the reservation of your right to prosecute a suit for a preference and in the event the courts award you a preference this payment could not be construed otherwise than as a payment on account the payment of which I would be bound to make in full regardless of whether I now pay a part. [244]

If this meets your approval kindly date and sign and mail to me original keeping duplicate for your files. If for any reason you disapprove kindly return to me the checks by registered mail.

Truly and sincerely yours,

T. H. ADAMS,

Special Deputy Supervisor of Banking, Liquidating Kelso State Bank.

REGISTER.

Received of T. H. Adams, Special Deputy Supervisor of Banking, Liquidating Kelso State Bank, the sum of Nine Thousand Two Hundred Thirteen and 22/100 Dollars (\$9 213 22) to apply on account of claims of the undersigned now on file with the

said Deputy Supervisor of Banking, on account of Depositary Bonds No. 1769847 and No. 1861587. The undersigned claims that the above-mentioned claims are for trust deposits and that it is therefore entitled to payment in full and not merely to dividends as a general creditor. The above payment is tendered in the form of checks designated as Dividend No. 1 for 10% and Dividend No. 2 for 10% of the total claims of the undersigned, but they are accepted by the undersigned only with the express understanding that such acceptance is in no way to be construed as a waiver of the right of the undersigned to a preferred claim or the right to prosecute a suit in the courts to establish a preferred claim. If the courts shall award the undersigned merely a general claim, then these checks are, of course, to apply as dividends as indicated on their face, but if the courts award the undersigned a preferred claim, then these checks shall apply merely as a payment on account. [245]

PLAINTIFFS' EXHIBIT No. 32—Cont'd.

November 4, 1921.

Mr. T. H. Adams,

Special Deputy Supervisor,

Liquidating Kelso State Bank,

Kelso, Washington.

Re: F. & D.—U. S. Nat'l Bank.

Dear Sir:

We acknowledge with thanks your letter of November 2d. To us the receipt as prepared by

you is clearly in better form than the one which I dictated when you were here, and I see no reason why it should not be signed. However, since I represent the surety and can communicate with them, I am taking the liberty of holding the checks for a few days until the Company passes upon the form of receipt, to which I trust you will have no objection.

Respectfully,

LG-MS.

Filed March 30, 1922. G. H. Marsh, Clerk.
[246]

Defendants' Exhibit "A."

WOODLAND STATE BANK,

Woodland, Washington, March 14, 1921.

Mr. Claude P. Hay, Bank Commissioner,
Olympia, Washington.

Dear Mr. Hay:

Mr. Carothers has requested me to write you and ask for five days more time to collect the assessment, as the peak of the county deposit will be reached this week, and he dislikes to do **anything** that may cause a flurry or lead to the county treasurer's not building up his balance at this time. It is absolutely essential that the public funds come in as usual in order to make a clean-up of the re-discounts

If you will kindly call up Mr. Carothers at Kelso and advise him without stating the matter so that

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the telephone girl gets it, I shall appreciate it.

Sincerely yours.

L. N. PLAMONDON.

Received March 15, 1921. State Bank Examiner,
Olympia, Washington.

Filed March 30, 1922. G. H. Marsh, Clerk.

Defendants' Exhibit "B."

KELSO STATE BANK.

Kelso, Wash., 3-14-21.

U. S. Nat'l Bank, Portland.

We enclose for Collection and Credit, items
marked X Protest.

Respectfully,

F. L. STEWART,

Cashier.

Report by No. 356.

| Drawn on | Amount | Date | Number | Drawn by | Last Indorser |
|---------------|-----------|------|--------|------------|---------------|
| Pope & Talbot | 32,897.97 | 2-26 | 890 | Puget Mill | L. P. Brown |
| San Francisco | 6,500.00 | 3-14 | 54725 | Co. | U. |
| 24-4 | 39,397.97 | | | 106 | |

Filed March 30, 1922. G. H. Marsh, Clerk.

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KELSO STATE BANK.

Kelso, Washington, 3-14-21.

U. S. Nat'l Bank, Portland.

We enclose for collection and credit items
Marked X Protest.

Respectfully,
F. L. STEWART,
Cashier.

Report by No. 356.

| | | | | | |
|---------------|-----------|------|--------|------------|---------------|
| Drawn on | Amount | Date | Number | Drawn by | Last Indorser |
| Pope & Talbot | 32,897.97 | 2-26 | 890 | Puget Mill | L. P. Brown |
| San Francisco | 6,500.00 | 3-14 | 54725 | Co. | U. |
| 24-4 | Checks | | | | |
| | 39,397.97 | | | | |

Filed March 30, 1922. G. H. Marsh, Clerk.
[248]

Defendants' Exhibit "C."

Transcript from the General Ledger of the
Kelso State Bank showing the Individual De-
posits subject to check from January 27, 1921,
to March 17, 1921.

| January | Checks | Deposits | Balance |
|----------|----------|----------|------------|
| '21. | | | |
| 27 | 8 774 71 | 3 036 53 | 216 090 44 |
| 28 | 2 354 53 | 2 361 90 | 216 270 24 |
| 29 | 4 734 68 | 2 817 32 | 214 300 17 |
| 31 | 8 761 50 | 7 721 64 | 213 101 76 |
| February | | | |
| 1 | 8 059 04 | 5 227 74 | 210 676 59 |
| 2 | 8 042 86 | 5 713 74 | 208 712 82 |
| 3 | 4 113 60 | 7 328 27 | 211 069 09 |

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| | | | |
|----|-----------|-----------|------------|
| 4 | 5 267 66 | 7 364 74 | 213 287 37 |
| 5 | 5 360 78 | 7 085 60 | 214 842 44 |
| 7 | 7 524 24 | 8 621 88 | 216 107 86 |
| 8 | 7 398 98 | 13 688 63 | 223 043 78 |
| 9 | 9 995 81 | 4 801 59 | 217 148 90 |
| 10 | 6 723 01 | 6 753 62 | 217 189 65 |
| 11 | 6 438 09 | 4 369 45 | 215 196 96 |
| 14 | 13 583 36 | 21 728 59 | 223 657 25 |
| 15 | 18 145 21 | 14 742 83 | 219 934 41 |
| 16 | 4 781 79 | 3 490 43 | 218 721 91 |
| 17 | 9 921 25 | 8 608 61 | 219 088 07 |
| 18 | 5 652 84 | 9 661 43 | 223 151 67 |
| 19 | 7 153 54 | 3 901 85 | 219 916 93 |
| 21 | 9 165 14 | 10 507 95 | 220 504 64 |
| 23 | 10 342 36 | 6 169 67 | 216 609 26 |
| 24 | 5 184 38 | 7 162 20 | 218 787 04 |
| 25 | 6 546 73 | 5 672 26 | 218 258 00 |
| 26 | 7 823 06 | 3 181 19 | 213 633 08 |
| 28 | 7 689 20 | 8 860 95 | 215 053 88 |

March

| | | | |
|----|-----------|-----------|------------|
| 1 | 4 219 21 | 5 139 07 | 215 520 36 |
| 2 | 9 919 89 | 9 839 31 | 215 448 89 |
| 3 | 7 392 99 | 5 098 33 | 213 247 39 |
| 4 | 6 693 50 | 7 477 11 | 214 102 25 |
| 5 | 5 313 86 | 4 388 30 | 213 249 26 |
| 7 | 7 871 09 | 12 816 05 | 218 260 08 |
| 8 | 5 857 19 | 7 874 86 | 220 401 45 |
| 9 | 8 046 54 | 12 748 00 | 225 019 15 |
| 10 | 9 249 51 | 9 855 77 | 225 726 11 |
| 11 | 5 002 86 | 18 202 42 | 238 790 61 |
| 12 | 12 712 31 | 5 277 10 | 231 334 79 |

| | | | |
|-----|-----------|-----------|------------|
| 14 | 10 774 20 | 47 911 24 | 268 570 22 |
| 15 | 16 083 08 | 5 272 58 | 257 772 02 |
| 16 | 12 373 21 | 7 828 61 | 256 312 66 |
| 17 | 3 965 33 | 2 427 65 | 254 737 51 |
| 17* | 206 76 | 134 20 | 254 665 58 |

*Corrected Balance.

Filed March 30, 1922. G. H. Marsh, Clerk.
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Defendants' Exhibit "D."

(Six Checks.)

Kelso, Washington, July 30, 1921.

Kelso State Bank.

Dividend check.

COWLITZ VALLEY BANK.

Pay to the order of FIDELITY & DEPOSIT
COMPANY \$3,685.29, Thirty-six hundred eighty-
five dollars twenty-nine cents.

T. H. ADAMS,

Special Deputy Supervisor of Banking, Liquidating
Kelso State Bank.

Dividend No. 1-10%.

Endorsements on back:

Pay to the order of any banker or trust company.
All prior endorsements guaranteed.

November 18, 1921.

FIDELITY TRUST COMPANY, BALTI-
MORE, MD.

GEO. L. MAHLER, Treasurer.

For deposit with The Fidelity Trust Company.

To the credit of Fidelity & Deposit Company of Maryland.

November 18, 1921.

ROLAND BENJAMIN, Treasurer.

Pay to the order of any bank or banker. Prior endorsements guaranteed.

November 21, 1921.

FIRST NATIONAL BANK IN ST.
LOUIS, MO.

C. L. ALLEN, Cashier.

Pay to the order of any bank, banker, or trust company. Prior endorsements guaranteed.

November 25, 1921.

FEDERAL RESERVE BANK OF SAN
FRANCISCO, Portland Branch.

PAID 11-26-21. [250]

Kelso, Washington, July 30, 1921.

Kelso State Bank.

Dividend check.

COWLITZ VALLEY BANK.

Pay to the order of Fidelity & Deposit Company
\$3,685.29, Thirty six hundred and eighty-five dollars
twenty-nine cents dollars.

Dividend No. 2-10%.

T. H. ADAMS,

Special Deputy Supervisor of Banking Liquidating
Kelso State Bank.

Endorsements on back:

For deposit with the Fidelity Trust Company.

To the credit of Fidelity & Deposit Company of Maryland.

November 18, 1921.

ROLAND BENJAMIN, Treasurer.

Pay to the order of any bank, banker, or trust company. All prior endorsements guaranteed.

November 18, 1921.

FIDELITY TRUST COMPANY, BALTIMORE, MARYLAND.

GEO. L. MAHLER, Treasurer.

Pay to the order of any bank or banker. Prior endorsements guaranteed.

November 21, 1921.

FIRST NATIONAL BANK IN ST. LOUIS, MO.

C. L. ALLEN, Cashier.

Pay to the order of any bank, banker, or trust company. Endorsements guaranteed.

November 25, 1921.

FEDERAL RESERVE BANK OF SAN FRANCISCO, Portland Branch.

PAID 11-26-21. [251]

Kelso, Washington, July 30, 1921.

Kelso State Bank.

Dividend check.

COWLITZ VALLEY BANK.

Pay to the order of FIDELITY & DEPOSIT COMPANY \$921.32, Nine hundred twenty-one dollars thirty-two cents dollars.

Dividend No. 1-10%.

T. H. ADAMS,
Special Deputy Supervisor of Banking Liquidating
Kelso State Bank.

Endorsements on back:

Pay to the order of any bank, banker, or trust
company. All prior endorsements guaranteed.

November 18, 1921.

FIDELITY TRUST COMPANY, BALTI-
MORE, MARYLAND.

GEORGE L. MAHLER, Treasurer.

For deposit with The Fidelity Trust Company.
To the credit of Fidelity & Deposit Company of
Maryland.

November 18, 1921.

ROLAND BENJAMIN,

Pay to the order of any bank or banker. All
prior endorsements guaranteed.

November 19, 1921.

FIRST NATIONAL BANK IN ST. LOUIS,
MO.

Pay to the order of any bank, banker, or trust
company. Prior endorsements guaranteed.

November 25, 1921.

FEDERAL RESERVE BANK OF SAN
FRANCISCO, Portland Branch.

PAID 11-26-21. [252]

Kelso, Washington, July 30, 1921.
Kelso State Bank.
Dividend check.

COWLITZ VALLEY BANK.

Pay to the order of MARYLAND CASUALTY

COMPANY \$1,842.64, Eighteen hundred forty-two dollars sixty-four cents dollars.

Dividend No. 2-10%.

T. H. ADAMS,

Special Deputy Supervisor of Banking Liquidating
Kelso State Bank.

Endorsements on back:

Pay to the order of any bank or banker. All
prior endorsements guaranteed.

August 9, 1921.

MARYLAND TRUST COMPANY, BALTI-
MORE, MARYLAND.

JERVIS SPENCER, Jr., Treasurer.

Pay to the order of Maryland Trust Company.
All prior endorsements guaranteed.

MARYLAND CASUALTY COMPANY,

J. H. PATTON, Treasurer.

Pay to the order of any bank or banker. Prior
endorsements guaranteed.

August 12, 1921.

UNION TRUST COMPANY, CHICAGO,
ILL.

F. P. SCHREIBER, Cashier.

Pay to the order of any bank, banker, or trust
company. Prior endorsements guaranteed.

August 15, 1921.

FEDERAL RESERVE BANK OF SAN
FRANCISCO, Portland Branch.

PAID 8-16-21. [253]

Kelso, Washington, July 30, 1921.

Kelso State Bank.

COWLITZ VALLEY BANK.

Pay to the order of FIDELITY & DEPOSIT COMPANY \$921.32, Nine hundred twenty-one dollars thirty-two cents dollars.

Dividend No. 2-10%.

T. H. ADAMS,

Special Deputy Supervisor of Banking Liquidating
Kelso State Bank.

Endorsements on back:

To the credit of Fidelity & Deposit Company of
Maryland.

November 18, 1921.

ROLAND BENJAMIN, Treasurer.

For deposit with The Fidelity Trust Company.
To the credit of Fidelity & Deposit Company of
Maryland.

November 18, 1921.

ROLAND BENJAMIN, Treasurer.

Pay to the order of any bank, banker, or trust
company. All prior endorsements guaranteed.

November 18, 1921.

FIDELITY TRUST COMPANY, BALTI-
MORE, MARYLAND.

GEO. L. MAHLER, Treasurer.

Pay to the order of any bank or banker. Prior
endorsements guaranteed.

November 21, 1921.

FIRST NATIONAL BANK IN ST. LOUIS,
MO.

C. L. ALLEN, Cashier.

Pay to the order of any bank, banker, or trust company. Prior endorsements guaranteed.

November 25, 1921.

FEDERAL RESERVE BANK OF SAN
FRANCISCO, Portland Branch.

PAID 11-26-21. [254]

Kelso, Washington, July 30, 1921.

Kelso State Bank.

Dividend check.

COWLITZ VALLEY BANK.

Pay to the order of MARYLAND CASUALTY
COMPANY \$1,842.64, Eighteen hundred forty-two
dollars sixty-four cents dollars.

Dividend No. 1-10%.

T. H. ADAMS,

Special Deputy Supervisor of Banking Liquidating
Kelso State Bank.

Endorsements on back:

Pay to the order of Maryland Trust Company.
All prior endorsements guaranteed.

MARYLAND CASUALTY COMPANY.

J. H. PATTON, Treasurer.

Pay to the order of any bank or banker. All
prior endorsements guaranteed.

August 9, 1921.

MARYLAND TRUST COMPANY,
BALTIMORE, MARYLAND.

JERVIS SPENCER, Jr., Treasurer.

Pay to the order of any bank or bankers. Prior
endorsements guaranteed.

August 12, 1921.

UNION TRUST COMPANY,
CHICAGO, ILL.

F. P. SCHREIBER, Cashier.

Pay to the order of any bank, banker, or trust company. Prior endorsements guaranteed.

August 15, 1921.

FEDERAL RESERVE BANK OF SAN
FRANCISCO, Portland Branch.

PAID 8-16-21.

Filed March 30, 1922. G. H. Marsh, Clerk.
[255]

AND AFTERWARDS, to wit, on Tuesday, the 22d day of August, 1922, the same being the 43d judicial day of the regular July term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [256]

In the District Court of the United States for the
District of Oregon.

E—8573.

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND, a Corporation, et al.,
Complainants and Appellants,
vs.

UNITED STATES NATIONAL BANK OF
PORTLAND, OREGON, a Corporation,
et al.,

Defendants,

KELSO STATE BANK, an Insolvent Banking
Corporation, and JOHN P. DUKE, as Su-
pervisor of Banking of the State of Wash-
ington,

Appellees.

**Order Specifying Exhibits to be Included With
Evidence and to Send Certain Original Ex-
hibits to Court of Appeals.**

Upon application of the above-named plaintiffs
and appellants for a modification of the order made
and entered herein on the 17th day of August, 1922,
settling the statement of evidence and directing the
Clerk of this Court to certify the original exhibits
in the above-entitled cause to the Clerk of the
United States Circuit Court of Appeals for the
Ninth Circuit,—

It is hereby ORDERED that said order be modi-
fied, and that certified copies of all of the exhibits in

the above-entitled case, except Plaintiffs' Exhibits 1, 2 and 27, be forwarded to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, in lieu of the originals as required by said order of August 17th, and that plaintiffs' original exhibits numbered 1, 2 and 27 be certified to the Clerk of the Circuit Court of Appeals in lieu of copies.

Done in open court this 22d day of August, A. D. 1922.

CHAS. E. WOLVERTON,
Judge.

Filed August 22, 1922. G. H. Marsh, Clerk.
[257]

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the District Court of the United States, for the District of Oregon, do hereby certify that the foregoing pages numbered from 4 to 257, inclusive, constitute the transcript of record on appeal from the decree of the said court in a cause in said court, wherein the Fidelity and Deposit Company of Maryland, a corporation, and Maryland Casualty Company, a corporation, are plaintiffs and appellants, and the United States National Bank of Portland, Oregon, a corporation, and the Kelso State Bank, an insolvent banking corporation, and John P. Duke, as Supervisor of

Banking of the State of Washington, in charge of and liquidating the assets of the Kelso State Bank, are defendants; and the said Kelso State Bank, an insolvent banking corporation, and John P. Duke, as Supervisor of Banking of the State of Washington, in charge of the liquidating the assets of the Kelso State Bank, are appellees; that I have prepared the said transcript of record in accordance with the praecipe for transcript filed by said appellants, and with the orders of said court, and that the said transcript is a full, true and correct transcript of the record and proceedings had in said court in said cause, in accordance with the said praecipe and orders, as the same appear of record and on file at my office and in my custody.

And I further certify that I return to the United States Circuit Court of Appeals for the Ninth Circuit with the said transcript of record attached, the original citation filed in said cause.

I further certify that the cost of the foregoing [258] transcript is \$73.90, and that the same has been paid by the said appellants.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court at Portland, in said district, this 23d day of August, 1922.

[Seal]

G. H. MARSH,
Clerk. [259]

[Endorsed]: No. 3920. United States Circuit Court of Appeals for the Ninth Circuit. Fidelity and Deposit Company of Maryland, a Corporation, and Maryland Casualty Company, a Corporation, Appellants, vs. Kelso State Bank, an Insolvent Banking Corporation, and John P. Duke, as Supervisor of Banking of the State of Washington, in Charge of and Liquidating the Assets of the Kelso State Bank, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Oregon.

Filed September 1, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk. [260]

In the District Court of the United States for the
District of Oregon.

E—8573.

FIDELITY & DEPOSIT COMPANY OF MARY-
LAND, a Corporation, and MARYLAND
CASUALTY COMPANY, a Corporation,
Plaintiffs,

vs.

THE UNITED STATES NATIONAL BANK, of
PORTLAND (OREGON), a Corporation,
and THE KELSO STATE BANK, an Insol-
vent Corporation, and JOHN P. DUKE, as
Supervisor of Banking of the State of Wash-
ington, in Charge of Liquidating the Assets of
the Kelso State Bank,

Defendants.

**Order Extending Time to September 20, 1922, for
Return to Citation on Appeal.**

This matter coming on to be heard upon motion
of the plaintiffs and appellants by Messrs. McCam-
ant & Thompson and Grinstead & Laube, their at-
torneys, for an extension of time for the return of
the citation on appeal herein, and upon considera-
tion of the motion and good cause appearing,—

IT IS ORDERED that the time for the return
of citation on appeal to the above-entitled cause,
which was heretofore made returnable on the 21st
day of August, 1922, be, and the same is hereby,
extended thirty (30) days from the said 21st day of
August, 1922, to the 20th day of September, 1922.

Done in open court this 16th day of August, A. D.
1922.

CHAS. E. WOLVERTON,
Judge. [261]

[Endorsed]: Original. No. E-8573. In the District Court of the United States for the District of Oregon. Fidelity & Deposit Company of Maryland, et al., Plaintiffs, vs. The United States National Bank of Portland, et al., Defendants. Order Extending Time to September 20, 1922, for Return to Citation on Appeal.

No. 3920. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 31, 1922. F. D. Monckton, Clerk.